INDEX.

Grounds of Appeal.

(Filed June 28, 1930)

NEW JERSEY COURT OF ERRORS AND APPEALS.

JACK MANOWITZ, Plaintiff-Appellant, vs. ESY KANOV, HARRY KANOV, MORRIS BELAGOOR, BENNY GERMAN and SAMUEL GERBER, Defendant-Appellee.	On Appeal from Hudson County Circuit Court.

To:

JACK GOLD, Esq.,
Attorney for Defendant-Appellee,
Benny German.

SIR:

PLEASE TAKE NOTICE that the following are the grounds upon which Louis Feinstein, appellant, appeals from the Order of Honorable Henry E. Ackerson, Jr., Judge of the Hudson County Circuit Court, dated May 15, 1930.

1. The Hudson County Circuit Court erred in ordering that the Rule to Show Cause dated November 26, 1929, be made absolute.

2. The Hudson County Circuit Court erred in refusing to discharge the Rule to Show Cause dated November 26, 1929.

3. That the Hudson County Circuit Court erred in making the order dated May 16, 1930, in the following particular:

"And it is further Ordered that the judgment of Twenty-four thousand ($24,000.) Dollars recovered by the plaintiff, Jack Manowitz, against all the defendants above named, and assigned by the said plaintiff to the defendant, Esy Kanov, and by him assigned to said Louis Feinstein, shall be cancelled of record by the Clerk of the County of Hudson as to the defendant, Benny German."

4. The Hudson County Circuit Court erred in making the Order of May 16, 1930 as follows:

"And it is further Ordered that the Sheriff of Hudson County shall forthwith deliver the execution issued in the above entitled cause on the 4th day of October, 1929 to the Clerk of the County of Hudson for cancellation, as to defendant German.

And it is further Ordered that the Sheriff shall forthwith release all of the property of the defendant, Benny German, levied upon by him by virtue of said execution from the force and effect of said levy."

Yours respectfully,

SAMUEL TARTALSKY,
Of Counsel with Louis Feinstein.

Service of a copy of the within Grounds of Appeal is hereby acknowledged this June 26, 1930.

SEPENUK & GOLD,
Attys. for Deft., Benny German.

Rule for Judgment.

HUDSON COUNTY CIRCUIT COURT.

JACK MANOWITZ, Plaintiff, vs. ESY KANOV, HARRY KANOV, MORRIS BELAGOOR, BENNY GERMAN and SAMUEL GERBER, Defendants.	Action at Law.

This action having been tried before Judge Frank L. Cleary with a jury in the presence of counsel for the respective parties on October 19th and October 20th, 1927; and the jury having returned a verdict in favor of the plaintiff for Twenty-four Thousand ($24,000.) Dollars damages;

IT IS ORDERED, that Judgment final be entered in favor of the plaintiff, Jack Manowitz, and against the defendants, Esy Kanov, Harry Kanov, Morris Belagoor, Benny German, and Samuel Gerber, for the sum of Twenty-four Thousand ($24,000) Dollars and plaintiff's costs to be taxed.

On Motion of

.....

Judge.

RASKIN, HORNSTEIN & RUSKIN,
Attorneys of Plaintiff.

Rule entered this 21st day of October, 1927.

Filed Clerk's Office, Oct. 21, 1927.
Hudson County, N. J.

JOHN J. MCGOVERN,
Clerk.

Judgment.

HUDSON COUNTY CIRCUIT COURT.

JACK MANOWITZ, Plaintiff, vs. ESY KANOV, HARRY KANOV, MORRIS BELAGOOR, BENNY GERMAN and SAMUEL GERBER, Defendants.	Action at Law.

Judgment entered October 21, 1927.

Damage	$24,000.00
Costs	79.60
Total	$24,079.60

RASKIN, HORNSTEIN & RUSKIN,
Attorneys of Plaintiff.

Judgment On Verdict in the above entitled cause was entered in this Court on the 21st day of October in the year of our Lord One Thousand Nine Hundred and Twenty-seven, in favor of the Plaintiff Jack Manowitz and against the Defendants Esy Kanov, Harry Kanov, Morris Belagoor, Benny German and Samuel Gerber in a plea of Action at Law for the sum of Twenty-four Thousand Dollars damages and Seventy-nine Dollars Sixty Cents, cost of suit.

Judgment entered and signed this 21st day of October, 1927.

.....
Judge.

Assignment of Judgment to Esy Kanov.

THIS INDENTURE, made the Fifteenth day of February One Thousand Nine Hundred and twenty-eight BETWEEN Jack Manowitz of the City of Jersey City, in the County of Hudson and State of New Jersey, party of the first part, AND Esy Kanov of the same place, party of the second part

WHEREAS, the said party of the First Part on the twenty-first day of October in the year One Thousand Nine Hundred and twenty-seven recovered a judgment in the Hudson County Circuit Court, against Esy Kanov, Harry Kanov, Morris Belagoor, Benny German and Samuel Gerber for the sum of Twenty-four thousand ($24,000) Dollars and costs.

NOW THIS INDENTURE WITNESSETH, That the said party of the first part, in consideration of the sum of One ($1.00) Dollar to him duly paid, has sold and by these presents does assign, transfer and set over unto the said party of the second part, and his assigns, the said judgment and all sum and 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 does hereby constitute and appoint the said party of the second part, his true and lawful attorney irrevocable, with power of substitution and revocation, for the use and at the proper cost and charge of the said party of the second part, to ask, demand and receive, and to sue out executions, and to 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, hereby ratifying and confirming all that his said attorney or substitute shall

lawfully do in the premises. And the said party of the first part does covenant, that he 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.

IN WITNESS WHEREOF, the party of the first part has hereunto set his hand and seal the day and year first above written.

Signed, sealed and delivered
in the presence of JACK MANOWITZ (L. S.)
I. F. GOLDENHORN

Assignment of Judgment to Esy Kanov.

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

BE IT REMEMBERED, That on this 15th day of February, in the year of Our Lord One Thousand Nine Hundred twenty-eight, before me, a Master in Chancery of New Jersey personally appeared Jack Manowitz who I am satisfied is the assignor in the within Deed of Assignment named; and I having first made known to him the contents thereof, he did acknowledge that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed.

ISAAC F. GOLDENHORN
A Master in Chancery of New Jersey

Marked for Identification
P. 1

CHAS. HERSHENSTEIN
S. C. C.

P. 2 in Ev.

CHAS. HERSHEINSTEIN
S. C. C.

Filed Clerk's Office
June 23, 1928
Hudson County, N. J.

JOHN J. McGOVERN
Clerk

Assignment of Judgment to Louis Feinstein.

This Indenture, made the second day of October, Ones Thousand nine hundred and twenty-nine, BETWEEN ESY KANOV, of Jersey City, County of Hudson and State of New Jersey, party of the first part, and LOUIS FEINSTEIN of Jersey City, County of Hudson and State of New Jersey, party of the second part.

WHEREAS, JACK MANOWITZ, on the Twenty-first day of October, in the year One Thousand Nine Hundred and twenty-seven, recovered a judgment in the Hudson County Circuit Court (which judgment was assigned to him by Esy Kanov by Assignment dated February 15th, 1928 and recorded in the Hudson County Clerk's Office in Book 4 of Assignment of Judgments, page 287) ESY KANOV, HARRY KANOV, MORRIS BELAGOOR, BENNY GERMAN and SAMUEL GERBER for the sum of Twenty-four Thousand ($24,000.00) Dollars and Seventy-nine Dollars Sixty ($79.60) Cents, cost of suit, as by the record thereof will appear:

NOW THIS INDENTURE WITNESSETH, That the said part of the first part, in consideration of One ($1.00) Dollar and other good and valuable consideration, to him duly paid, has sold, and by these presents, does assign, transfer and set over unto the said party of the second part, and his heirs and assigns, the said judgment and all sum and 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, does hereby constitute and appoint the said part of the second part, and his heirs and assigns, his true and lawful attorney irrevocable, with power of substi-

tution and revocation, for the use and at the proper cost and charge of the said part of the second part, to ask, demand and receive, and to sue out executions, and to 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 attorney one or more under him for the purpose aforesaid, to make and substitute, and, at pleasure, to revoke: hereby ratifying and confirming all that his said attorney or substitute shall lawfully do in the premises. And the said party of the first part does covenant, that there is now due on the said judgment the sum of Twenty-four thousand ($24,000.00) Dollars and that he 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 part of the second part, saving the said party of the first harmless of and from any costs in the premises.

IN WITNESS WHEREOF, the party of the first part has hereunto set his hand and seal the day and year first above written.

ESY KANOV. (L. S.)

Signed, Sealed and Delivered in the presence of
ROBERT SCHENKER.

Assignment of Judgment to Louis Feinstein.

STATE OF NEW JERSEY }
COUNTY OF HUDSON } SS.:

Be it Remembered, That on this Second day of October, in the year of Our Lord One Thousand Nine Hundred twenty-nine, before me, personally appeared ESY KANOV, who, I am satisfied, is the assignor in the within Deed of Assignment named; and I having first made known to him the contents thereof, he did acknowledge that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed.

ROBERT SCHENKER,
Notary Public of New Jersey.

P.3 In ev.

CHARLES HERSHENSTEIN,
S. C. C.

Filed Clerk's Office Oct. 3, 1929.
Hudson County, N. J.

JOHN J. McGOVERN,
Clerk.

Notice.

HUDSON COUNTY CIRCUIT COURT.

JACK MANOWITZ,
Plaintiff,
vs.
ESY KANOV, *et als.*,
Defendants.

To:
Messrs. RASKIN, HORNSTEIN & RUSKIN,
Attorneys for Plaintiff.

SIRS:

PLEASE TAKE NOTICE that I shall apply to Honorable Frank J. Cleary, Judge of the Hudson County Circuit Court, on Friday, the 24th day of February 1928, at the Court House in Jersey City, at ten o'clock in the forenoon or as soon thereafter as I can be heard, for an order directing the Sheriff of Hudson County to release the levy made by him on the funds of Benny German, on deposit in the Commercial Trust Company of New Jersey, at 15 Exchange Place, in Jersey City, New Jersey, together with all other levies and attachments made by the Sheriff, for the reason that the above entitled judgment has been fully paid and satisfied.

Dated, February 18th, 1928.

Respectfully yours,

SEPENUK & GOLD,
Attorneys for Defendant Benny German,
1 Newark Avenue,
Jersey City, N. J.

Notice.

The within matter is continued until March 2nd, 1928.

FRANK L. CLEARY,
Judge of the Hudson County Circuit Court.

Copy received.

RASKIN, HORNSTEIN & RUSKIN,
Attorneys of Plaintiff.

Filed Clerk's Office Mar. 9, 1928.
Hudson County, N. J.

JOHN J. MCGOVERN,
Clerk.

Order.

HUDSON COUNTY CIRCUIT COURT.

JACK MANOWITZ, Plaintiff, vs. ESY KANOV, *et als.*, Defendants.	Action at Law.

This matter having been regularly opened before this Honorable Court, by Jacob Gold of Sepenuk & Gold, Esqs., attorneys for the defendant Benny German, and no one appearing for the plaintiff, and

It appearing that due notice of this application for this order was served on the attorneys for the plaintiff, as more fully appears by a copy of said notice, duly acknowledged, which is annexed hereto and made a part hereof, and

It further appearing to the court that the judgment taken in this cause has been fully paid and satisfied,

It is, on this 9th day of March 1928 ordered, that the moneys deposited in the name of Benny German in the Commercial Trust Company of New Jersey, be released from the levy made by the Sheriff of Hudson County, by reason of a writ of execution, in the above entitled cause, and

It is further ordered that the Sheriff of Hudson County forthwith release any levies or attachments made by him, by virtue of the execution issued in

this cause upon the property of Benny German, and that all properties of the said Benny German be released and discharged from the effect of said executions, and

It is further ordered that a copy of this order be served on the attorneys for the plaintiff, the Sheriff of Hudson County, and the Commercial Trust Company of New Jersey, within five days from the date hereof.

FRANK L. CLEARY,
Judge of the Hudson County Circuit Court.

Filed Clerk's Office Mar. 9, 1928.
Hudson County, N. J.

JOHN J. McGOVERN,
Clerk.

Petition for Discharge of Judgment.

HUDSON COUNTY CIRCUIT COURT.

JACK MANOWITZ,
Plaintiff,
vs.
IZZY KANOV, *et als.*,
Defendants.
Action at Law.

To:
THE HONORABLE FRANK L. CLEARY,
JUDGE OF THE HUDSON COUNTY CIRCUIT COURT.

The petition of Benjamin German respectfully shows that:

1. That he is one of the defendants in the above entitled cause.

2. That a judgment was awarded in said action on or about October 21, 1927 in the sum of Twenty Four Thousand ($24,000) Dollars; said judgment was awarded against your petitioner and the other defendants jointly, said action being in the nature of an action in tort.

On or about said October 21, 1927, or shortly thereafter, a writ of execution was duly issued out of Hudson County Circuit Court based on said judgment, and by reason thereof one Isy Kanov, one of the joint tort-feasors, a defendant in the above entitled suit paid the said judgment to the plaintiff, and did receive certain satisfactions, discontinuances, releases and assignments for same.

3. Although said Isy Kanov received said satisfactions, discontinuances and releases, said Isy

Kanov fraudulently failed to place said discontinuances, satisfactions or releases or any of them upon record, and the said writ of execution was not returned by the Sheriff of Hudson County in accordance with the Statute in such case made and provided.

Petitioner further shows that on March 9, 1928, an order was entered in the office of the County Clerk after due notice to the plaintiff in the above entitled cause, which order recited the fact that the judgment obtained in the matter entitled as above, and upon which said execution herein referred to was issued, has been duly paid and satisfied and that said judgment and writ of execution were no longer in effect.

Subsequent to the filing of the said order discharging the writ of execution issued in the above entitled matter, the said Isy Kanov assigned said judgment to one Louis Feinstein, who by his attorney on October 4, 1929 obtained from the County Clerk of Hudson County and the Sheriff of Hudson County improvidently, illegally and through inadvertence an alias execution contrary to law, although the first execution was then outstanding, no return having been made thereon, and although the said judgment by the order of this Court had been declared paid and satisfied.

Petitioner avers that the failure of said defendant, Isy Kanov, to file and record the said release, satisfaction and discharge were fraud upon your petitioner.

Your petitioner further avers that the said Louis Feinstein is a dummy for the said Isy Kanov, and the purpose of issuing the said execution against the petitioner is to enforce from your petitioner contribution.

Petition for Discharge of Judgment.

Your petitioner further avers that if said writ of execution be allowed to stand, the said Isy Kanov and Louis Feinstein would, by their fraud, compel the petitioner to pay to them the entire amount of said judgment.

1. Petitioner therefore prays that an order issue, declaring the said judgment obtained by the plaintiff, Jack Monowitz, fully paid and satisfied, and that an order be made discharging each and every writ of execution heretofore issued in the above entitled matter; and

2. That Louis Feinstein be ordered to show cause why his proceedings on the writ of execution should not be permanently restrained and said judgment be declared fully paid and satisfied; and,

3. That an order issue restraining the Sheriff of Hudson County and the said Louis Feinstein from further proceeding in any way in this matter until the further order of this Court.

And your petitioner will ever pray, &c.

BENJAMIN GERMAN,
By his attorneys,
Sepenuk & Gold,
277 Grove St.,
Jersey City, N. J.

Affidavit of Benjamin German.

HUDSON COUNTY CIRCUIT COURT.

JACK MANOWITZ,
Plaintiff,

vs.

IZZY KANOV, *et als.*,
Defendants.

STATE OF NEW JERSEY
COUNTY OF HUDSON } SS.:

BENJAMIN GERMAN, being by me duly sworn, according to law, upon his oath, deposes and says:

1. That he is defendant in the above entitled cause; that he was one of four defendants in an action brought by one Jack Manowitz, against him and the others, to recover certain damages; that a judgment was awarded in said action in the sum of $24,000.00.

2. That subsequent to such verdict, one, Esy Kanov, a joint tort feasor in said verdict, did pay the said judgment to the plaintiff and did receive certain satisfactions, discontinuances, releases and assignments for same.

3. That the said Esy Kanov, in an effort to circumvent the law, has assigned the said judgment to Louis Feinstein, who has caused to be issued an execution out of the office of the County Clerk of the County of Hudson, and who has levied upon the property of your deponent, by virtue of said execution.

Affidavit of Benjamin German.

4. That said judgment has been fully paid and satisfied, and that there is no money due to the plaintiff in said action.

5. That he is suffering an irreparable loss and injury by reason of the execution illegally and improvidently issued against him.

BENJAMIN GERMAN.

Sworn and subscribed to before me this 25th day of November, 1929.

JACOB GOLD,
Attorney at Law of New Jersey.

Affidavit of Jacob Gold.

HUDSON COUNTY CIRCUIT COURT.

JACK MANOWITZ,
Plaintiff,
vs.
IZZY KANOV, *et als.*,
Defendants.

JACOB GOLD, being by me duly sworn, according to law, upon his oath, deposes and says:

That he is the attorney for Benjamin German; that he has made an investigation of the records of the County Clerk and the Sheriff's Office and finds that an execution was issued out of the office of the County Clerk on October 21st, 1927; that said execution was never returned in any form or fashion; that on October 4th, 1929, the said County Clerk of Hudson County and Sheriff of Hudson County improvidently, illegally, and through inadvertence, issued an alias execution, contrary to law, although the first execution was then outstanding, no return having been made thereon.

Deponent further says that on March 9th, 1928, an order was entered in the office of the County Clerk, reciting the fact that the judgment obtained in the matter in which Benjamin German, Esy Kanov and others, and upon which this execution is based, had been fully paid and satisfied, and that this execution has been issued on a judgment which is no longer in effect by reason of an order of this Court.

JACOB GOLD.

Sworn and subscribed to before me this
25th day of November, 1928.

STANLEY COHEN,
An Attorney at Law of New Jersey.

Affidavit of I. Faerber Goldenhorn.

HUDSON COUNTY CIRCUIT COURT.

JACK MANOWITZ, Plaintiff, vs. IZZY KANOV, *et als.*, Defendants.	Action at Law.

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

I. FAERBER GOLDENHORN, being by me duly sworn according to law, upon his oath, doth depose and say:

That he is an Attorney and Counsellor at Law of the State of New Jersey, and deponent recalls that this matter was settled for the sum of $10,000.00, and he recalls that releases were drawn in the matter, and this happened shortly after the judgment was entered, and releases were delivered to Izzy Kanov, one of the Defendants herein; I also recall that prior to the signing of the Releases an Assignment of Judgment was witnessed by me.

I. FAERBER GOLDENHORN.

Sworn and subscribed to before me this 15th day of November, 1929.

MAY GOLD,
Atty. at Law of New Jersey.

Filed Clerk's Office,
Nov. 16, 1929,
Hudson County, N. J.

Rule to Show Cause.

HUDSON COUNTY CIRCUIT COURT.

JACK MANOWITZ,
Plaintiff,

vs.

IZZY KANOV, *et als.*,
Defendants.

Upon reading and filing the Petition and Affidavits of Benjamin German, Jacob Gold and I. F. Goldenhorn in the above entitled matter,

IT IS, on this 26th day of November, 1929, ORDERED, that the plaintiff, Louis Feinstein, show cause before me on the 6th day of December, 1929, at the Court House in Jersey City, why an order should not issue compelling the Sheriff of Hudson County to release property levied upon by virtue of an execution illegally and improvidently issued, and

IT IS FURTHER ORDERED, that the said plaintiff show cause why the said judgment should not be cancelled of record, the same having been fully paid and satisfied, as is alleged in the said affidavits, and

IT IS FURTHER ORDERED, that the plaintiff show cause why the said execution improvidently and illegally issued shall not be turned back to the Sheriff of Hudson County for cancellation, and

IT IS FURTHER ORDERED, that until the further order or decree of this Court, all matters, actions and proceedings brought upon said judgment or execution shall be stayed, and

Rule to Show Cause.

IT IS FURTHER ORDERED, that a copy of this order be served upon the plaintiff, Louis Feinstein, by leaving the same with the attorney for the said Louis Feinstein, or by leaving the same at the office of the said attorney within two days from the date hereof, and

IT IS FURTHER ORDERED, that on the return of this rule either party may take testimony in open Court.

FRANK L. CLEARY,
Judge of the Hudson County Circuit Court.

Filed Clerk's Office Nov. 26, 1929,
Hudson County, N. J.

JOHN J. MCGOVERN,
Clerk

Order.

HUDSON COUNTY CIRCUIT COURT.

JACK MANOWITZ, Plaintiff, vs. IZZY KANOV, *et als.*, Defendants.	Action at Law.

The Court having this day made a rule to show cause, in the above entitled matter, *ex parte,* wherein and whereby a certain sale under an execution issuing out of the above entitled Court was stayed, and the attorney for Louis Feinstein having served a notice upon attorneys for Benny German to vacate said restraint; and said matter coming on to be heard before me this 26th day of November, 1929, on motion of O'Brien & Tartalsky, attorneys for Louis Feinstein, and in the presence of Jacob Gold of the firm of Sepenuk and Gold, attorneys for Benny German, and the Court having heard argument and considered the matter, it is on this 26th day of November, 1929, ORDERED that the order to show cause dated this day be and is hereby modified so that no restraint against said execution sale is imposed unless and until said Benny German shall deposit with the Sheriff of Hudson County cash or a bond with sufficient surety in double the sum of the judgment herein. It is further ORDERED that the Sheriff of Hudson County may proceed with said execution sale unless such cash or bond as herein provided be furnished.

FRANK L. CLEARY,
Judge.

Filed Clerk's Office, Nov. 26, 1929,
Hudson County, N. J.

Memorandum.

HUDSON COUNTY CIRCUIT COURT.

JACK MANOWITZ,
Plaintiff,

vs.

ESY KANOV, HARRY KANOV, MORRIS BELAGOOR, BENNY GERMAN and SAMUEL GERBER,
Defendants.

ACKERSON, *J.*

This matter comes before me upon a rule to show cause why an order should not be made compelling the Sheriff of Hudson County to release property levied upon under an execution in the above entitled cause, and why the judgment therein should not be cancelled as fully paid and satisfied, and why the aforesaid execution should not be turned back to the said Sheriff for cancellation.

It is not proper to go into the merits of the matter at this time, however, because neither the *ex parte* affidavits upon which the rule was allowed, nor those annexed to plaintiff's brief can be considered in the final disposal of the rule, and the plaintiff has not taken depositions in support thereof, upon notice to the other side, as required by established practice. *Peer* v. *Bloxham,* 82 N. J. 288.

Since many facts necessary to a complete consideration and determination of the questions raised by this rule are not in the record, I have decided to allow the plaintiff and defendant to take depositions upon proper notice, and present same

to the court on or before March 1, 1930, and the disposal of the rule will await the filing of such depositions.

HENRY E. ACKERSON,
Judge.

Filed Clerk's Office, Jan. 31, 1930,
Hudson County, N. J.

Affidavit of Stenographer.

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

MARY T. FREEMAN, of full age, being duly sworn according to law, upon her oath deposes and says:

I will faithfully record stenographically the depositions in this matter and will transcribe the same to the best of my ability.

MARY T. FREEMAN.

Sworn to and subscribed before me this 28th day of February, 1930.

LESTER LASKER,
Attorney at Law of New Jersey.

Depositions.

Deposition of Frank C. C. Wormann.

HUDSON COUNTY CIRCUIT COURT.

JACK MANOWITZ,
Plaintiff,

vs.

ESY KANOV, HARRY KANOV, MORRIS BELAGOOR, BENNY GERMAN and SAMUEL GERBER,
Defendants.

Depositions taken February 24, 1930 at two o'clock in the afternoon before me, Charles Hershenstein, Supreme Court Commissioner, upon notice, in the presence of:

JACOB GOLD, of Sepenuk & Gold, Attorneys for the defendant, Benny German. EDWARD P. STOUT, of Counsel.

SAMUEL TARTALSKY, Attorney for Louis Feinstein, a judgment-creditor.

FRANK C. C. WORMANN, being duly sworn, testified as follows:

BY MR. STOUT:

Q. You are here, Mr. Worman, in response to a subpoena *duces tecum* served upon the Sheriff in this matter? A. Right, I am.

Q. What records have you? A. Only record I find is the execution.

Q. What execution? A. Execution of Jack Manowitz vs. Kanov and others, seems to be assigned, dated December Term 1929 of the Hudson Circuit Court and the return on same after execution was made out of what was levied upon, etc.

Witness produces from the files of the Office of the Sheriff of Hudson County a fi fa in the cause entitled Jack Manowitz, plaintiff, against Esy Kanov, Harry Kanov, Morris Belagoor, Benny German and Samuel Gerber, defendants on contract, issued October 4, 1929, returnable December 11, 1929, which fi fa directs an execution against all the goods and chattels of the defendants and the lands and tenements of which they were seized on October 21, 1927, to which there is annexed a levy upon all the rights and credits, goods and chattels of the defendant, Benny German, dated November 1, 1929, together with a description of the assets of the said defendant, which were levied upon. The execution is recorded in Book 27 of Executions, page 306, on October 4, 1929.

Mr. Stout: Mr. Commissioner, does that execution show it is an alias?

Commissioner: No, it does not.

Execution, levy and return offered in evidence and marked Exhibit D-I.

The original execution, levy and return have been returned to the Deputy Sheriff to be transmitted to the Court at the time the depositions are presented to the Court.

Q. Mr. Wormann, do you know whether there is a record kept in the Sheriff's office of all executions that are delivered to that office? A. No regular docket, a book of all executions received from

the County Clerk for the Sheriff to go out and execute.

Q. Have you made an examination of those records to ascertain whether there was any other execution delivered to the Sheriff in this matter? A. As far as I know, this is the only one.

Q. Then you have no knowledge or the records of the Sheriff's office do not disclose that there was an execution issued in this matter on or about October 21, 1927? A. No, not that I know of.

Q. Would you say that the records of the Sheriff's office disclose it? A. I don't know.

By Mr. Tartalsky:

Q. Mr. Wormann, your attention has been called that this execution recites that the goods were seized on October 21, 1927, which is the date of the judgment? A. No, later date.

Q. What is that date in there, October 21, 1927? A. That I don't know, that paper came through only last year and that is the original paper that came to the Sheriff and on that execution we went out and levied on the goods.

Q. Didn't you say all goods were seized as of the date of the judgment? A. They dated back to that date.

Mr. Stout: I move that this testimony be stricken out because the execution speaks for itself and it is not for this witness to put any interpretation upon it.

Deposition of I. Faeber Goldenborn.

I. FAEBER GOLDENBORN, being duly sworn, testified as follows:

BY MR. STOUT:

Q. You are an attorney and counselor at law of the State of New Jersey? A. Yes, sir.

Q. You know Jack Manowitz? A. Yes.

Q. Do you know Esy Kanov? A. I do.

Q. Harry Kanov? A. I do.

Q. Morris Belagoor? A. I do.

Q. Benny German? A. I do.

Q. Samuel Gerber? A. I know him.

Q. You tried the case, did you not, of Manowitz against these defendants? A. I was asked to try it for Isidor Hornstein.

Q. Was he the attorney for the plaintiff? A. He or his firm were the attorneys of record.

Q. You tried the case, did you not? A. I did.

Q. Which resulted in a judgment of $25,000? A. Verdict of the jury was $24,000.

Q. Did you have anything to do with the judgment after it was obtained? A. Yes, I tried to effect a settlement and did effect a settlement on the basis of $10,000.

Q. With whom did you have that transaction? A. My dealings were with Mr. Armstrong of the firm of Egan & Armstrong, and Esy Nanov.

Q. Were there any papers executed at the time of the settlement of this judgment? A. There were.

Q. What papers? A. Satisfaction of judgment—

Mr. Tartalsky: I object unless it is offered in evidence what the papers were and I object to any conversation as to what those papers

were unless they are produced and I object to an conversations he had that are not in the presence of Mr. Feinstein, whom I represent.

Mr. Stout: I am only asking the witness what papers there were and will then ask for the production of those papers and offer them in evidence.

Mr. Tartalsky: I move to strike out that part of what was delivered unless those papers are produced or their nonproduction accounted for.

Commissioner: I cannot strike any of the testimony out, as the record goes to the Circuit Court. All I can do is have the testimony taken.

A. Satisfaction of Judgment executed, release executed, and there was an assignment of judgment executed, three papers were executed and delivered to Mr. Thomas Armstrong of Egan and Armstrong.

Q. And you had to do with the execution of those papers? A. I had to do with the execution of the release and satisfaction in the absence of Mr. Hornstein, who at that time went on a trip somewhere, and also of the assignment.

Q. Was there also a discontinuance of the action?

Mr. Tartalsky: I object to that also, if there was a discontinuance, the discontinuance is the best evidence.

A. There was a discontinuance of the suit because they started to appeal it and it was necessary—

Mr. Tartalsky: I object to that and move to strike out any part beyond the discontinuance.

Q. A rule to show cause was taken by these defendants from the verdict of the jury, was it not?

Mr. Tartalsky: I object on the ground that if there was an order to show cause, the record is the best evidence.

A. There was a rule to show cause.

Mr. Tartalsky: I move to strike out that portion of the testimony.

Q. Did you have any conversation with Esy Kanov at the time of the settlement of this judgment?

Mr. Tartalsky: I object on the ground that any conversation had by Mr. Goldenhorn with Mr. Kanov, not in the presence of Louis Feinstein, whom I represent, and who is the respondent to the petition in this cause, is not binding upon him nor is it beneficial or competent in any wise. I further object on the ground that any conversation would be immaterial, incompetent and irrelevant as attempting to impair or change or affect the public records in this case as they appear in the Clerk's Office of the Hudson County Circuit Court.

Mr. Stout: I desire to have it noted that Mr. Feinstein took this assignment of judgment from Kanov and he took it subject to all its infirmities and equities and, therefore, we don't think we are going to impair the force and effect of any instrument or paper that was executed at the time.

A. The answer is yes.

Q. What did you say to him, if anything, as to the effect of the execution of these papers that were delivered?

Mr. Tartalsky: I object on the ground that it certainly is leading, on the next ground that whatever conversation Mr. Goldenhorn had with Mr. Kanov, as to the effect of the delivery of these papers cannot affect in any wise the effect which those papers would have because that calls for a conclusion of law by the Court and is to be determined by the Court and not by what Mr. Goldenhorn said.

Q. I ask the question again, but on the objection tion that the papers speak for themselves. The one big issue in the case is as to the intent of Kanov who was a co-tort feasor in this transaction and that the payment of judgment by one tort feasor release it or satisfy the judgment as to all. I think my friend on the other side has argued into the case the question of intent. That is a very sharp issue in this case. I will ask the witness what did he say to Esy Kanov at the time of the delivery of these papers?

Mr. Tartalsky: My objection in answer to Mr. Stout, regardless of what was said, certain papers were alleged to have been delivered and whether those papers amounted to payment or satisfaction of the judgment, is purely a question of law for the Court.

A. I told Mr. Kanov at the time the papers were delivered to his attorney that the assignment of judgment would be inefficacious because I was giving him the satisfaction of the judgment and that

the satisfaction amounted to a release as against all the other joint tort feasors, but since his attorney insisted upon having an assignment, I would deliver it to him but, to use my own language, I told him it was not worth the paper it was written on.

Mr. Tartalsky: I move to strike the answer out as to whether Mr. Goldenhorn's opinion can in any wise effect the legal effect of the delivery of the assignment of a judgment to a party paying for that assignment.

Q. Mr. Goldenhorn, for further identification of these papers, if you can recall, who were the parties to the various documents, from whom to whom?

Mr. Tartalsky: I object on the ground that the papers themselves are the best evidence. Their non-production not being accounted for, any evidence by this witness is incompetent, irrelevant and immaterial.

Mr. Stout: Mr. Commissioner, I desire to have noted on the record that counsel for Mr. Feinstein states that there was no release executed and delivered and no satisfaction of judgment.

Mr. Tartalsky: I do not represent nor did I represent any of the defendants in the suit. I was not present at the time of the delivery of the papers alleged to have been delivered. I can only testify as to what my information is. My information is that the only papers which were delivered at the time that Kanov paid the consideration to Manowitz, the plaintiff, was an assignment of the judgment which I now produce and I believe a discontinuance

of the suit. It is my information that no other papers were delivered.

Mr. Stout: You have not in your possession the satisfaction or release?

Mr. Tartalsky: I have not now or never had.

Mr. Stout: You made an investigation?

Mr. Tartalsky: I will state too that Mr. Armstrong told me the other day that there was no satisfaction delivered, that he represented Kanov, the defendant, and he is the one who took the assignment and he did it with a view of keeping the judgment alive. That statement was made to me by Thomas Armstrong of the firm of Egan & Armstrong, attorneys for the defendant at that time.

Commissioner: It seems to me that the Court should be in possession of all the facts. Are you going to produce these witnesses?

Mr. Stout: Yes, I will subpoena or rather have these people subpoenaed.

Q. Mr. Goldenhorn, in view of your testimony and the statement made by counsel for Feinstein, will you give the names of the parties and a description of these papers?

Mr. Tartalsky: I object again on the ground that the production of the papers are the best evidence.

A. I drew the release and remember having considerable difficulty in getting the father of the young man plaintiff to execute the release because of the fact that he wanted the greater share of the proceeds than the son wanted to give him.

Q. That is the plaintiff in the action? A. Yes. After considerable difficulty and a number of con-

ferences in my office and in the office of Isaac Gross, who took a friendly interest in the father, I drew up the release. I also prepared the satisfaction of the judgment myself from information imparted to me from the office of my associate, Mr. Hornstein. It was I who delivered the papers when the money was turned over to me at the Commercial Trust Company at the paying teller's window. Mr. Armstrong went down for the purpose of getting one of the checks cashed and we went down for the purpose of having that done. About five of us went with him. I remember it was a Monday of the week that these papers were delivered.

Mr. Tartalsky: I move to strike out that testimony on the ground that it is incompetent, irrelevant and immaterial, and not binding upon Mr. Feinstein.

Q. That release was from Jack Manowitz to Esy Kanov and the other defendants in this action? A. To all of them.

Q. And the satisfaction ran the same way? A. To all of them.

Mr. Tartalsky: I object to the question on the ground that the production of the papers, if they were delivered, and apparently they were, are the best evidence.

A. I think I might be able to find copies of them in my papers. If I haven't them, they are surely in the office of Mr. Hornstein.

By Commissioner:

Q. To whom did you deliver those papers? A. To Mr. Thomas Armstrong, who was the attorney

for Mr. Kanov, in the presence of Mr. Kanov, and at least two of the other defendants.

Q. They were executed in your presence? A. Yes, sir.

Q. And delivered by you personally? A. Yes, sir.

BY MR. TARTALSKY:

Q. Mr. Goldenhorn, whatever papers you have just mentioned as being delivered, they were delivered after the judgment had been recovered? A. Yes, sir.

Q. The judgment was recovered on October 21, 1927? A. Yes, sir.

Q. I show you a paper bearing date February 15, 1928, Assignment of Judgment from Jack Manowitz to Esy Kanov, bearing signature of Jack Manowitz, signed in the presence of I. F. Goldenhorn, and ask you if this was the paper delivered by you to Esy Kanov on the date from which it bears date? A. That is one of the papers.

Assignment of Judgment marked for identification.

Q. Mr. Goldenhorn, you represented Manowitz, the plaintiff, is that so? A. I represented Manowitz, the plaintiff, and his father and a brother at that time.

Q. Manowitz was the plaintiff in the case? A. He was but there were two other actions pending.

Q. In this case, Jack Manowitz was the plaintiff and you represented him? A. Yes, sir.

Q. And Mr. Armstrong represented Esy Kanov and the other defendant? A. Right.

Q. You know Mr. Armstrong, don't you? A. Very well.

Q. He was perfectly competent to advise his client as to the effect of those papers?

Mr. Stout: I object to that question as to the competency of a lawyer.

Mr. Tartalsky: I will withdraw the question if there is any objection to it.

Q. Mr. Goldenhorn, Esy Kanov paid $10,000 at the time that this assignment was executed to him, didn't he? A. He did not.

Q. About that time? A. Not he alone.

Q. Did you receive any money from Esy Kanov at the time of the execution of this assignment? A. I did not.

Q. Did your client? A. He did not.

Q. Was there any consideration? A. There was.

Q. How much? A. $10,000.

Q. Mr. Goldenhorn, I show you a paper and ask you if this is your affidavit made on November 15, 1929? A. Yes, that is my affidavit.

Q. And in that affidavit you stated, did you not, that you recall the matter was settled for $10,000 and that releases were drawn in the matter, that this happened shortly after the judgment was entered and releases delivered to Esy Kanov, one of the defendants herein, and you also recall that prior to the signing of the release an assignment of judgment was witnessed by me, and the assignment of judgment which you refer to in your affidavit is the assignment which I have just had marked for identification? A. Yes, sir.

Affidavit marked for identification P-2.

Q. The fact is, is it not, Mr. Goldenhorn, that the affidavit executed on this date mentions nothing about an assignment? A. I think the best evidence of what the affidavit contains is the affidavit itself.

By Mr. Stout:

Q. Have you anything further to say in reference to the last question prepounded by counsel for the other side? A. I—

Mr. Tartalsky: I object on the ground that the affidavit speaks for itself.

A. I wanted to say I didn't want to be technical—there was $10,000 paid, but it was paid by Mr. Armstrong, at that time when the money was paid I said three people were there, three of the defendants, and that Mr. Kanov stated that he had contributed a certain amount and the others were to contribute certain amounts. My best recollection is that Mr. Kanov said he had contributed $7,500.00 and that one of the other men had contributed $2,500.00 When we got there early in the morning of the settlement, the matter was delayed in order to give one of the other defendants an opportunity to raise a certain sum and that when that money came into Mr. Armstrong's possession, it was delivered in my presence, then the money was taken downstairs and deposited in the Commercial Trust Company to the account of Mr. Armstrong and he drew his check or checks, one to the order of my client for a certain amount, and one to the order of the father of my client and one to myself. That is my best recollection of that transaction.

The money was not paid by Esy Kanov, it was paid by three people.

By Mr. Tartalsky:

Q. Benny German did not pay anything as far as you know? A. I don't think he did. I don't think he was there. I think he was there the day before the settlement, he did not appear at the time of the settlement.

By Mr. Stout:

Q. Will you state now that the assignment was executed and delivered prior to the release and the satisfaction of judgment? A. I won't say that, I don't recall. My best recollection is all were delivered at the same time and turned over by me to Mr. Armstrong in the presence of Mr. Kanov and these two other defendants.

Q. You know Saul Nemser, an attorney at law and counselor of the State of New Jersey? A. Yes, I know him.

Q. Do you know whether he ever represented or appeared for Esy Kanov? A. He was attorney for Mr. Kanov before this suit was started, I know that. I know that positively because I was in his office when he was consulted about it.

By Mr. Stout: Mr. Tartalsky, will you consent to the introduction into evidence of a copy of the record in the Sheriff's office, if there be such a record, showing a previous execution delivered in this matter?

Mr. Tartalsky: Certainly.

Mr. Stout: I see that the subpoena in this matter served upon the Sheriff only called for

him to produce papers and execution and didn't call for records. If there is such a record, I will have a certified copy of it made and have it offered in evidence.

It is stipulated and consented between counsel that there may be annexed to this record copies of any other records appearing in the Sheriff's office pertaining to this case.

JAMES O'NEILL, being duly sworn, testified as follows:

BY MR. STOUT:

Q. You are here in response to a subpoena *duces tecum* served upon the County Clerk in this action? A. Yes, sir.

Q. Have you with you a file of the Clerk in so far as it pertains to the papers in the Clerk's Office? A. Except with the execution that he has no return on.

Q. Do you know whether there is any record in the County Clerk's office showing that an execution was issued on the judgment in this action previous to the one here in evidence marked Exhibit D-1? A. Why there is in the index the issue of execution that I saw, one over there in the book. Whether it is prior to that one or not, I don't know.

Q. I think they might be offered as on exhibit, but note it in the testimony what the papers are.

Counsel now offers in evidence the records on file in the Hudson County Clerk's Office in the case of Jack Manowitz, plaintiff, against Esy Kanov, Harry Kanov, Morris Belagoor,

Benny German and Samuel Gerber, defendants, consisting of summons and complaint, answer, reply, notice of trial, order for examination before trial, stipulation, rules for judgment, six orders and stipulations of continuance, a notice, two orders, petition for discharge of judgment, together with memorandum of the Circuit Court. These papers will be offered as one exhibit and marked D-2.

BY MR. TARTALSKY:

Q. Mr. O'Neill, no satisfaction of judgment on file, is there? A. No, sir.

Q. Judgment is still open and uncancelled and undischarged of record, is it? A. Yes.

BENNY GERMAN, being duly sworn, testified as follows:

BY MR. STOUT:

Q. Mr. German, you are one of the defendants in the action of Jack Manowitz against Esy Kanov and others. You were one of the defendants, were you not? A. Yes.

Q. Do you know Saul Nemser, an attorney at law of the State of New Jersey? A. Yes, I know him.

Q. Did you have any communications with him after this judgment was obtained?

Mr. Tartalsky: I object to that question unless he will say yes or no.

A. Yes.

Q. Do you know about when that was after obtaining the judgment? A. Two weeks, he sent me a letter after settlement.

Q. You say about two weeks after the settlement? A. Yes.

Mr. Tartalsky: I object to that referring to any settlement. I move that the word settlement be stricken out on the ground that there is no fact to justify that conclusion by the question.

Q. What do you mean in your previous answer when you say settlement, what do you mean by that?

Mr. Tartalsky: I object to that as being immaterial what he means by it.

Q. You said about two weeks after the settlement you got a letter from Mr. Nemser, what do you mean by settlement? A. He settled with Manowitz for $10,000 after this, Nemser wrote.

Q. Who told you that? A. Nemser wrote.

Q. Nemser wrote you to that effect? A. I give the letter to the lawyer.

Q. This letter to you was from Saul Nemser? A. Saul Nemser, yes.

Q. And what was the contents of the letter?

Mr. Tartalsky: I object to it on the ground that the contents of any letter between Mr. Nemser and this man is not binding on Feinstein, any correspondence between Nemser and German is not binding upon Feinstein, who is the respondent to this petition.

Mr. Stout: I am offering this testimony to show that Saul Nemser has appeared for Esy Kanvo, one of the defendants here, and later appeared for Louis Feinstein, the pretended assignee of the judgment, and that by reason thereof, Feinstein, through his attorney, knew of the previous transaction of Kanov with the plaintiff in this action.

Mr. Tartalsky: Knowledge of an attorney is not binding upon a client unless he is working in the scope of his employment.

BY THE COMMISSIONER:

Q. Do you remember what the letter said? A. Sure I remember.

Q. What were the contents of the letter?

Mr. Tartalsky: Same objection, on the ground that the contents of any letter between Mr. Nemser and this man is not binding upon Feinstein, and any correspondence between Nemser and German is not binding upon Feinstein.

A. Say to come to the office, the letter say come and settle up the case from Kanov with Manowitz, Kanov paid $10,000 and I should part a part.

BY MR. TARTALSKY:

Q. Mr. German, you knew that Kanov paid $10,000 for the judgment to Manowitz? A. Kanov told me he paid $10,000.

Q. You didn't want to give him your share? A. I didn't want to pay part of it because I wanted an appeal.

Q. You had a lawyer, didn't you? A. Sure I got a lawyer.

Q. Who was your lawyer? A. Jacob Gold.

Q. Egan & Armstrong were? A. There were my lawyers had before.

Q. Then after that— A. I took Mr. Jacob Gold.

Q. You refused to pay Kanov when Kanov asked you and you still refuse to pay your part? A. I refuse, sure.

Q. And you refuse to pay, why? A. Because I wanted an appeal.

Mr. Stout: I want to offer in evidence a certificate copy or release by Esy Kanov to Harry Kanov, who is one of the joint tort feasors.

Mr. Tartalsky: I have no objection.

Mr. Stout: I want it noted on the record that the acknowledgment was taken before Saul Nemser.

Release by Esy Kanov to Harry Kanov of this judgment, which judgment was a lien upon the property both of Esy Kanov and Harry Kanov, releasing a piece of property of Harry Kanov from the lien of the judgment, dated May 17, 1928, recorded in the Hudson County Register's Office in book 79 of releases, page 78, from which release it appears that the acknowledgment was taken before Saul Nemser, Master In Chancery. Release offered in evidence and marked Exhibit D-3.

Counsel offers copy of fi fa, dated October 21, 1927, in lieu of any certified copy of the record of the Clerk's office in respect thereto.

Fi Fa offered in evidence and marked Exhibit D-4.

This execution was recorded in Book 26 of Executions, page 266.

Counsel for Mr. Feinstein offers in evidence a certified copy of transcript of judgment in favor of the plaintiff Jack Manowitz, and against the defendants, Esy Kanov, Harry Kanov, Morris Belagoor, Benny German and Samuel Gerber, which was entered in the Hudson County Circuit Court on October 21, 1927, for $24,000, and $79.69 costs, annexed to which is a certificate copy of the assignment of judgment of Jack Manowitz to Esy Kanov, recorded June 23, 1928.

Copy of transcript offered in evidence and marked Exhibit P-1.

Mr. Stout: I do not object to the form of the offer, but I do as to the substance of the assignment. It is of no validity because the judgment had been satisfied and there was not anything to assign.

I now offer in evidence original assignment itself, Jack Manowitz to Esy Kanov, of the judgment mentioned in the transcript, dated February 15, 1928, and recorded in the Hudson County Clerk's Office on June 23, 1928 in book 4 of Assignment of Judgments, page 287, previously marked P-1 for identification and now offered in evidence and marked P-2.

By Mr. Stout: I object on the ground that the judgment was satisfied by one or more of the joint tort feasors and therefore satisfied as to all, and therefore there was nothing to assign.

By Mr. Tartalsky: I offer in evidence assignment of the same judgment, dated October 2, 1929, from Esy Kanov to Louis Feinstein, recorded in the Hudson County Clerk's Office on October 3, 1929 in Book 4 of Assignment of Judgments, page 366—Marked Exhibit P-3.

By Mr. Stout: I object to that on the ground that the judgment had previously been satisfied by Esy Kanov on behalf of himself and others and that he had nothing to assign.

By Mr. Tartalsky: I offer in evidence the affidavit which was marked before for identification, affidavit of I. F. Goldenhorn, heretofore marked P-2 for Identification, now offered in evidence and marked P-4.

Mr. Stout: I move that the hearing be continued until tomorrow, Tuesday, February 25, 1930, at 4:00 P. M. for the purpose of producing Mr. Thomas R. Armstrong referred to in the testimony and a certified copy of the record of the Sheriff's office in respect to the first execution issued on this judgment.

Hearing adjourned to February 25, 1930, at 4:00 P. M.

HUDSON COUNTY CIRCUIT COURT.

Deposition of Thomas R. Armstrong.

JACK MANOWITZ,
Plaintiff,

vs.

ESY KANOV, HARRY KANOV, MORRIS BELAGOOR, BENNY GERMAN and SAMUEL GERBER,
Defendants.

Depositions taken at continued hearing February 25, 1930 at four o'clock in the afternoon, before me, CHARLES HERSHENSTEIN, Supreme Court Commissioner, in the presence of: JACOB GOLD, of Sepenuk & Gold, Attorneys for the defendant, Benny German, EDWARD P. STOUT, of Counsel.

SAMUEL TARTALSKY, Attorney for Louis Feinstein, a judgment creditor.

THOMAS R. ARMSTRONG, being duly sworn, testified as follows:

BY MR. STOUT:

Q. Referring to the minute of the statement made by Mr. Tartalsky at the last hearing as to what Mr. Armstrong said to him: Mr. Tartalsky made the following statement; and I want to know whether it is a correct statement: "I will state too that Mr. Armstrong—Mr. Tartalsky stated on the record yesterday: 'I do not represent nor did I represent any of the defendants in the suit. I

was not present at the time of the delivery of the papers alleged to have been delivered. I can only testify as to what my information is. My information is that the only papers which were delivered at the time that Kanov paid the consideration to Manowitz, the plaintiff, was an assignment of the judgment which I now produce and I believe a discontinuance of the suit. It is my information that no other papers were delivered." Mr. Tartalsky again refers to you and says: "I will state too that Mr. Armstrong told me the other day that there was no satisfaction delivered, that he represented Kanov, the defendant, and he is the one who took the assignment and he did it with a view to keeping the judgment alive. That statement was made to me by Thomas Armstrong of the firm of Egan & Armstrong, Attorneys for the defendant at that time." A. That is substantially correct.

Q. Then what checks were delivered by you on behalf of these defendants or defendant? A. I didn't deliver the checks, Ross did that.

(Question stricken out.)

Q. Mr. Armstrong, may I ask you what you had to do, if anything, with the closing of this transaction between Esy Kanov and the plaintiff, Manowitz? A. Nothing more, as I recall the circumstances of that closing, than Ross, Hornstein, Manowitz, the two Manowitz's, I don't think Goldenhorn was there, Esy Kanov and Belagoor were present in Ross's office when this money was paid over, I was in the next room closing another matter.

Q. Don't you know, Mr. Armstrong, that these checks were turned over in the Commercial Trust Company? A. Yes.

Q. That was not in your office? A. As I recall it now, they were all down there at this conference trying to iron out this dispute with German, it seems; as I recall it, they were to come down on a Monday, to take that day arbitrarily, and make a division of the $2,500. Harry Kanov, one of the defendants, was eliminated; he was sickly and out of it and was not to pay $2,500, but the others were all to contribute their share.

Q. Just a minute, Mr. Armstrong, I want you to testify—you understood what the transaction was when you make a statement like this, it ought to be from factual knowledge. What I am trying to bring out by you is what you had to do and what your first-hand knowledge is as to the closing of the transaction between Kanov and Manowitz when this money was paid. A. I don't recall being present when any money was paid. I don't recall that part of the transaction at all. I only know the settlement was made and that the papers were signed and Hornstein signed a receipt for the money and that is all I remember about it.

Q. Do you know what papers were delivered and executed in this matter of your own knowledge? A. No, I could not say. I don't remember exactly what was delivered, but my understanding, if you want that, is—

Q. Do you know of a release talked about? A. Yes.

Q. Do you know of a release executed and delivered? A. Yes.

Q. Was there a discontinuance of the suit? A. Of the other suit, two suits pending. Judgment in

the first suit and another suit pending, release and discontinuance of that suit.

Q. Do you know, Mr. Armstrong, who were the parties to the release? A. The three Manowitz's.

Q. This paper is presented to me by Mr. Tartalsky and purports to be a release. I offer it in evidence.

(Instrument entitled General Release made by Joseph Manowitz and Louis Manowitz to Esy Kanov, Harry Kanov, Morris Belagoor, Benny German and Samuel Gerber, bearing date February 8, 1928, is offered in evidence and marked Exhibit D-5.)

Q. Do you know, Mr. Armstrong, of your own knowledge whether there was a warrant of satisfaction of this judgment given? A. I believe that there was not; in fact, I would say there was not.

Q. Why are you so positive that a warrant of satisfaction was not delivered when you were uncertain a little while ago as to what papers were delivered? A. When I spoke of the meeting in the office when all the parties were there, Ross came into my office and asked me if it would be advisable to take a satisfaction and I advised him.

Q. You know at this time of the so-called settlement of the payment of the money by Kanov to Manowitz that Hornstein was not in the city, do you know that? A. I don't recall that.

Q. Don't you know Mr. Goldenhorn was representing the plaintiff in the closing of this action? A. I don't believe so, because Hornstein was in the office. In fact it was Hornstein that brought these papers to the office.

Q. At the time the money was paid? A. That I don't know.

Q. I am asking you who was present at the time, if you know, when the checks were delivered, representing Manowitz, the plaintiff? A. That I don't know. I can't say whether the money was delivered. The only meeting I recall is at the office.

Q. Do you know how the money was delivered over? A. No. I could not tell you.

Q. You don't know it was in three checks? A. I don't remember that.

Q. As a matter of fact, Mr. Armstrong, you were in the adjoining room taking care of your own business and had little or no knowledge of what was going on? A. I knew they were all there.

Q. You didn't know what took place? A. I was insisting upon a release from the other Manowitz's, that was part of the condition of the settlement.

Q. Why didn't you want a satisfaction of the judgment? A. Because Mr. Kanov had been down to see me about a week before and told me that German was not paying him the money and that therefore he wanted to protect himself when he was going to pay out the whole sum of money, outside of what Belagoor was paying him, and he wanted some protection to go back at German for.

Q. German didn't want to put up any money toward this settlement? A. If you want me, I will tell you about that.

Q. Is it first-hand knowledge? A. It is conversation had with his son. I never said two words to German himself.

Q. Also your testimony as to what they wanted German to put up, that is also hearsay? A. No, I think they were all in the office there and practically agreed upon the $2,500.00.

Q. In your office? A. Yes.

Q. In your particular room? A. In Ross's room, but I was there.

Q. You didn't want a satisfaction of warrant or satisfaction of this judgment so that the matter could be kept alive as to German? A. Yes, sir.

Q. Why did you want a release? A. Relsase from him because two other possible suits pending.

Q. There was no release then, as far as you know, in the case of Jack Manowitz against Esy Kanov? A. Not as far as I know, there was not, no. There was a receipt signed by Manowitz, the judgment creditor, acknowledging the receipt of the amount of money that was paid to him.

Q. Any satisfaction of judgment?

Mr. Tartalsky: I object to that.

A. I cannot recall what was in it, but it was a regular receipt. That is why we had him sign that paper that he received that amount of money.

Q. It was your idea then at that time that one joint tort feasor could take the assignment and keep the judgment alive?

Mr. Tartalsky: I object to that as it is incompetent, irrelevant and immaterial and cannot affect the issues because it would be a conclusion for the court to draw of the facts in issue.

Q. We are now directing attention to the closing of the transaction, the execution of the papers, and why some papers were given and other papers not given, and witness has testified that he didn't want a satisfaction because he wanted to keep the judgment alive. Didn't you so testify? A. I did.

Q. Now, then, and I ask you, did you then believe or was it your opinion that one joint tort

feasor could satisfy a judgment and keep it alive as to the other tort feasors?

Mr. Tartalsky: I object on the ground that what Mr. Armstrong thought or what his opinion was as to whether or not certain things done would amount to a satisfaction of judgment or not is incompetent, irrelevant and immaterial and a conclusion for the court to draw.

Commissioner: Go ahead and answer it.

A. The judgment was on record. My idea was not to have that judgment satisfied of record because German had property. It came to my notice through Kanov that German was going to sell his property and we would tie up his property with this unsatisfied judgment of record.

Q. In other words it was part of a scheme to hold, so far as the record was concerned, German as liable on this judgment?

By Mr. Tartalsky: I object to the question as to whether it is part of a scheme or not. It certainly is within the law for a person to take one document in place of another, no scheme to that but certainly good legal advice.

A. My purpose was to give Kanov as much protection as I could.

Q. You didn't then have in mind, did you, that Kanov could proceed against his joint tort feasors on this judgment?

Mr. Tartalsky: I object to that on the ground as to what he had in mind.

A. We were doing the best we could under the circumstances.

Q. But as far as you know, the transaction was to satisfy the plaintiff; in other words, the payment of this money was to satisfy the plaintiff? A. Exactly, and to lift Mr. Kanov from tying up his accounts in the First National Bank in which they had his accounts tied up.

Q. Did you realize or think that paying $10,000 in an attempted satisfaction of a $24,000 judgment would not be satisfaction as far the plaintiff is concerned?

Mr. Tartalsky: I object on the ground that what Mr. Armstrong thought or realized is incompetent, irrelevant and immaterial and on the further ground that a judgment is the highest form of contract known to the law, that it is assignable under the statutes and whatever rights the plaintiff had are vested in the assignment by the conveying of an assignment, so that any thought or opinion of Mr. Armstrong on the subject is incompetent, irrelevant and immaterial.

Mr. Stout: Mr. Commissioner, I am here trying to ascertain for the benefit of the Court what was in the mind of counsel and the parties at the time of closing this and some of my questions may be a little sharp, but I want to bring out the facts.

Mr. Tartalsky: My response to that is what Mr. Armstrong has in mind has already been answered. He said he had in mind to protect his client who was paying $10,000 for the judgment to keep that judgment alive and he therefore took an assignment. The documents as executed constitute a certain situation of facts

which is for the Court to determine and the question has already been answered and any further answers are incompetent, irrelevant and immaterial.

A. I considered it so when I had the receipt from Mr. Manowitz and also the assignment of the judgment signed by him in so far as Manowitz coming back at Kanov and a release from the other two, one suit was pending and the other was threatened.

Q. You realize, Mr. Armstrong, that these defendants were then severally liable to the full extent of the $24,000?

Mr. Tartalsky: I object to that on the ground that the record speaks for itself.

Mr. Stout: I wish you would put in an objection to everything I say and let it go at that. As far as I am concerned, you can have a general objection to everything.

Mr. Tartalsky: No, I want it specific, it is not general.

A. Certainly.

Q. You were of the opinion then that a defendant who is liable to the extent of $24,000, so far as the plaintiff in the suit is concerned, could satisfy it, so far as this particular defendant is concerned, by paying $10,000 instead of $24,000?

Mr. Tartalsky: I object and my objection is that what Mr. Armstrong's opinion is, is incompetent, irrelevant and immaterial. He has already answered that in his opinion he was trying to protect his client.

A. Any interest which Manowitz may have had in that judgment was diversified from him by the assignment.

Q. Assignment to a joint tort feasor? A. Yes.

Q. That was your best judgment? A. Yes, sir.

Q. And, therefore, you thought that the assignment to one of these joint tort feasors— A. Not to one of them, but to Mr. Kanov the assignment was made.

Q. Now, then, Mr. Armstrong, it was your opinion and you so advised the parties at the time that the assignment of this judgment to one tort feasor, who had paid $10,000 in satisfaction of a $24,000 judgment, kept the judgment alive as to the other defendants? A. I am not saying it.

Mr. Tartalsky: I object to it on the ground that Mr. Armstrong's opinion is incompetent, irrelevant and immaterial, as being already answered, and it so happens under the law of this state that such an assignment does not operate as a satisfaction.

Q. Did you advise him? A. I said previously I was trying to give as much protection to Kanov as I possibly could under the circumstances and that was the only means available if he wanted to go back for a contribution to the others.

Q. Being the careful lawyer you are, did you advise Mr. Kanov as to what his status might be in case he paid this judgment or paid $10,000? A. No, I had no communication directly with Kanov. It was through Edgar Ross.

Q. Then you were not so particular as to whether Kanov could proceed on this judgment or not? A. Oh yes I was. I was there to protect him as much

as I could. Whether he could be successful in the final analysis or not, I could not say.

Q. You represented or your firm represented all these defendants? A. Five defendants.

Q. Did you advise Benny German what the effect of this would be upon him? A. Never saw Benny German.

Q. As I understood your testimony, it was on one occasion? A. Once only at the preliminary settlement, not after that.

Q. You didn't tell him that you were working out some kind of plan in your office whereby one of these co-tort feasors might get an advantage under this judgment whereby you might proceed against him whom you also represented? A. He was there and assented to the whole transaction. He was right there. Ross might have advised him, I don't know.

Q. You know, Mr. Armstrong, whether the assignment was delivered at the time that the money was paid? A. That I can't say, I cannot connect the money with the conference. Whether the money was delivered then or the papers exchanged or what happened, I don't recall, that I don't remember.

Q. I call your attention to the assignment of Jack Manowitz or attempted assignment of Jack Manowitz to Esy Kanov of this judgment in question, which assignment is marked Exhibit P-2 and the fact that Isaac F. Goldenhorn's name appears on that paper, would that refresh your recollection as to whether he was there? A. I don't think he was there. There was some dispute between Hornstein and Goldenhorn as to what the fee of Goldenhorn was to be, that was discussed there.

Q. Did you think Mr. Goldenhorn would permit that to be discussed in his absence? A. That is what it was, as I recall it and I think Hornstein had all these papers. Whether the money was delivered then or not I don't know.

Q. You now on further reflection, Mr. Armstrong, recall that Mr. Hornstein was not present at this particular meeting? A. I am not saying that. Mr. Hornstein was present at the particular meeting I am speaking of wherein Ross came in to me and talked about it.

Q. Don't you know, Mr. Armstrong, that the checks were delivered and the papers delivered as a simultaneous transaction? A. I don't remember whether they were or not. My recollection is that these papers were brought down by Hornstein to see if they were satisfactory and for us to look over. I believe Mr. Kanov was there and two or three others and they were having this conference. I think, as I recall now, subsequently there was another appointment made to deliver the papers and turn over the money and that is the meeting I am referred to when Hornstein and Goldenhorn were discussing the fee.

Q. A general release and assignment of a judgment called for counsel on the other side to pass upon before it was done? A. Yes, because there was some dispute about getting the old man to sign the release. We would not settle unless the father would sign the release.

Q. Mr. Armstrong, if the paper was presented without his signature to it, I don't see why it should be submitted to you? A. We wanted to see the form of release before it was signed and then Hornstein told me he was going away.

Q. Your recollection seems to be that Hornstein was not present when the money was turned over and the matter closed? A. Yes.

Q. And you were not present? A. No, not then.

Q. Mr. Armstrong, you had taken out a rule to show cause why this verdict should not be set aside, didn't you? A. I think so, Ross did that, I can't tell.

Q. Do you know whether you got an order after this so-called settlement was made discharging that rule? A. I can't say, that I don't remember.

Q. You know today there is no order on file discharging that rule to show cause which is still open? A. I don't know.

Q. Your office represented these defendants? A. We had attended to taking care of whatever there was. If he didn't do that, then it was something left undone.

By Mr. Tartalsky:

Q. Mr. Armstrong, as I understand it, you represented Esy Kanov, who was one of the judgment debtors in the suit in which Jack Manowitz is the plaintiff and who recovered a judgment for $24,000.00 on October 21, 1927? A. Yes.

Q. As I understand it, there was another suit pending by one Joseph Manowitz or Louis Manowitz? A. Yes.

Q. And one suit threatened by either one of these parties? A. He was the father, yes.

Q. After the judgment was recovered, were all the judgment debtors in your office? A. I don't think all of them, no. I don't think Harry Kanov, he was not there, and I don't believe Gerber was there, Sam Gerber, but I think three of them, Belagoor, German and Esy Kanov were there.

Q. Subsequent to the rendition of this judgment, was Mr. German present at your office with Mr. Kanov? A. Yes, I would say he was with Mr. Belagoor.

Q. Any conversation among those parties resulting in an agreement between them? A. I can't say that there was any specific agreement, except what Mr. Kanov told me.

Q. Do you remember any conversation between Mr. German and Mr. Kanov with regard to the payment of this Judgment? A. There was a conversation with Mr. German and also Mr. Belagoor that they would put up their equal share of it and when they could do it, settlement fixed at $10,000.

Q. How much did they each agree to put up? A. $2,500.00.

Q. Did Mr. German agree to pay $2,500? A. He didn't say he would do it, I assumed that they would each do it.

Q. Did Mr. German put up $2,500 or any sum? A. As far as I know, he didn't.

Q. You took an assignment of the judgment from Jack Manowitz to Esy Kanov, was the consideration for that $10,000?

Mr. Stout: I object to that as calling for an absolute conclusion.

Q. The sum of $10,000 was paid at or about the time of the delivery of the assignment? A. Yes, I suppose it was, I was not there.

Q. This release which has been marked Exhibit D-5 and signed by Joseph Manowitz and Louis Manowitz, was that delivered at or about the same time that the assignment of judgment was delivered?

Question withdrawn.

Q. You were not present at the time the papers were delivered? A. My recollection is that I was not there then all the things were turned over. My mind has been refreshened, I don't think I was.

Q. Did you subsequently receive the papers which were delivered, the result of the consummation of the transaction whereby Manowitz received $10,000?

Mr. Stout: I object to that question. How does the witness know whether all the papers were turned over, unless he knew what papers were turned over to the representative of the firm.

Question withdrawn.

Q. Did you eventually receive the papers which were the result of the transaction? A. I never did, our office did.

Q. Did you see the papers or any of the papers which your office had? A. I don't think I did, I think Ross turned them over to Kanov.

Q. Do you recall this assignment of judgment and this release? A. I recall these papers.

Q. Do you recall whether or not there was a satisfaction of Judgment? A. There was no satisfaction of judgment. The reason I am positive about it is because Ross asked me about it.

Q. This discontinuance which you mentioned, was that a discontinuance of that suit? A. Discontinuance of the suit then pending and not tried.

Q. Had nothing to do with the judgment? A. No.

By Mr. Stout:

Q. There might of been a warrant of satisfaction for this judgment turned over with the papers that

you didn't know of? A. It is possible. But I don't believe so.

By Mr. Tartalsky:

Q. I understood you to say on direct examination that you insisted upon an assignment of judgment and not the satisfaction of judgment? A. Yes, Ross came in to me and asked whether he would take a satisfaction of the judgment.

Mr. Stout: I object to that as not being a proper question.

By the Commissimner:

Q. You are not positive as to what you said about representing all these defendants. Did your office represent all these defendants? A. Yes, through a Mrs. Gerber, we were requested by Mrs. Gerber, Ross was.

Q. Your office represented all these defendants at the trial, took a rule to show cause on behalf of the defendants and your office was attempting to represent all the defendants in the payment of the money to Manowitz, the plaintiff? A. Yes.

Jacob Gold, being duly sworn, testified as follows:

By Mr. Stout:

Q. Mr. Gold, you are one of the attorneys, your firm, the attorneys of record in this matter representing the defendant, Benny German? A. Yes, sir.

Q. You were not present at any of the transactions of negotiations referred to here today in the settlement or proposed payment of this money to Manowitz? A. No, sir.

Q. You came into the case after that? A. Yes, sir.

Q. Since yesterday, you went to the Sheriff's office and made a search for further papers and execution in connection with this matter? A. Yes, sir.

Q. And these papers here which I show you, you took from the custody of the Sheriff with the Sheriff's consent? A. Yes, sir, gave him my receipt for it.

Q. And brought them here to present to the Commissioner at this hearing? A. Yes, sir.

Q. Where did you find those papers? A. By making search of the records in the Sheriff's office, with a Mr. Kane of the Sheriff's office.

Q. Have you heretofore made inquiry of the Sheriff's office to ascertain whether this particular execution was in that office or not?

Mr. Tartalsky: I object to what he did. I have no objection to any of the official records of the Sheriff's office going into evidence.

Mr. Stout: I am trying to show that these records were in the Sheriff's Office all this time and for months have tried to locate them and, in fact, it was said they were lost, and counsel on the other side has practically disclaimed any knowledge of their existence, I mean that your client did not know, or the person you represent now, did not know at the time of the assignment of this judgment to him that these papers were on record.

Mr. Tartarlsky: I do know there was an execution which was levied shortly after the judgment was recovered and that the plaintiff in the action was paid and an assignment of the judgment made to Kanov. Now I know there was an execution previously to the assignment in this case.

Mr. Stout: You are not addressing yourself to the question you have argued in your brief that your client was an innocent purchaser of the judgment by assignment. I want to show that all this time these papers were in the files of the Sheriff's office and not even we could ascertain that they were there.

Mr. Tartalsky: If you could not find them, how could you expect a man, not a lawyer, to find them? Any knowledge on his part is incompetent, irrelevant and immaterial as to his legal rights and until we did prove knowledge on his part, his knowledge—

Mr. Stout: I asked Mr. Wormann who had charge of all these records and who had charge of them at the argument in the case before Judge Ackerson where the original execution was and he said there was none and if there had been, it was lost.

Mr. Tartalsky: I move to strike out that question on the ground that it refers to a conversation had by this witness with some other man, Mr. Wormann, not in the presence of my client, and would be incompetent, irrelevant and immaterial.

Mr. Stout: I want it noted on the record that Mr. Wormann came here in response to a subpoena *duces decum* served upon the Sheriff to produce all the papers and execution

in this matter. He came here yesterday and went on the stand and testified that the execution, the second execution which I refer to as an alias execution was the only execution in the office. He brought here the only execution there was. I offer in evidence the original execution in this matter and ask that it be marked in evidence.

By Commissioner: I understand these are the original documents which you have procured from the Sheriff's office and for which you gave him your receipt. Did you advise the Sheriff's office that these instruments are to be transmitted to the Court?

By Mr. Gold: I told them I would bring them back and that the Court could order them.

By Commissioner: Will they be found if the Court wants them?

By Mr. Gold: Yes.

Witness produces a fi fa issued October 21, 1927, in the matter entitled Jack Manowitz, plaintiff, against Esy Kanov, et al., defendants, upon a judgment to which there is annexed a levy bearing date October 21, 1927, made against bank accounts. This execution and levy is admitted in evidence and marked Exhibit D-6. This exhibit will be returned to the Sheriff's Office with instructions to transmit same to the Court when required. It is recorded in Liber 26 of executions, page 266.

Mr. Stout: I now offer in evidence a letter from the firm of Raskin, Hornstein & Ruskin, signed by Alexander Raskin, which was on file in the Sheriff's Office in this matter, dated February 15, 1928.

Letter offered in evidence and marked Exhibit D-7.

Mr. Tartalsky: I object to the letter first on the ground it is a communication from one attorney to the Sheriff in which my client is no party and it is incompetent, irrelevant and immaterial and not binding, and on the further ground that any correspondence that was had between the attorney for the plaintiff and the Sheriff's office or anybody else is incompetent, irrelevant and immaterial and not binding upon my client, Feinstein, the respondent in this cause.

By Commissioner:

Q. Mr. Gold, this letter which Mr. Stout produces and which I marked D-7, was that among the papers on file with the Sheriff's Office? A. Yes, sir.

Q. And the execution which has been offered in evidence and marked Exhibit D-6? A. Yes, sir, and stamped on the back Receiver by John J. Coppinger, February 15, 1928.

By Commissioner: Exhibit D-7 reads as follows:

"Sheriff of Hudson County,
Court House, Jersey City, New Jersey.

Dear Sir:

In the case of Jack Manowitz against Esy Kanov, et als, in which a judgment was recovered in the Circuit Court for $24000.00 and in which, upon an execution issued out of said court, you made a levy upon certain funds now on deposit in the First National Bank of Jersey City in the name of Morris Belagoor, one of the defendants, and Esy Kanov, you are

hereby notified that said matter has been fully settled and you are hereby directed to vacate said levy and this will be your warrant for so doing.

Very truly yours,

RASKIN, HORNSTEIN & RUSKIN,
By ALEXANDER RASKIN."

By Mr. Tartalsky: I move that that letter be stricken from the record and object on the further ground that if the purpose of this letter is to show satisfaction of the judgment, it does not conform with the requirements of law which requires a satisfaction to be acknowledged by the attorney or by the plaintiff.

Mr. Stout: I offer another file in the Sheriff's office, which is a copy of the order of the Honorable Frank L. Cleary, Judge of the Hudson County Circuit Court, which was filed.

By Commissioner: Mr. Stout offers an order entitled Hudson County Circuit Court, between Jack Manowitz, plaintiff, against Esy Kanov, et als., defendants, which was received March 9, 1928 by John J. Coppinger, Sheriff, which order bears date March 9, 1928, and in which order it is stated that it appearing to the Court that the judgment taken in this cause has been fully paid and satisfied, it is on this 9th day of March, 1928, Ordered, that certain moneys deposited in the name of Benny German in the Commercial Trust Company be released and further directs the Sheriff to release any levies or attachments made by him by virtue of an execution issued in this cause against the property of Benny German.

By Commissioner: Is there another copy of this order which I can have? Will you consent, Mr. Tartalsky, that I return my depositions with a copy of the order?

Mr. Tartalsky: Yes, certainly.

By Commissioner: This order from the Sheriff's Office is offered in evidence and marked Exhibit D-8. Annexed to these depositions is a certified copy of this order which has been marked Exhibit D-8.

By Mr. Stout: To complete the file in the Sheriff's Office in this matter, I offer in evidence a copy of the rule to show cause taken by these defendants from the verdict.

By Mr. Tartalsky: I object to it on the ground that any rule to show cause upon which no action has been taken is of no consequence to the issue in this cause.

By Commissioner: Mr. Stout offers the rule to show cause, dated October 21, 1927, made by Judge Frank L. Cleary, why the verdict should not be set aside. This rule to show cause is admitted in evidence and marked Exhibit D-9. Exhibits D-6, D-7, D-8 and D-9 will be returned to the Sheriff's Office with instructions to transmit the same to the Court when required.

Mr. Stout: I desire to offer in evidence a notice that was served by the attorney for the defendant, Benny German, upon Saul Nemser, who appears as the attorney for Esy Kanov by acknowledging service on this notice to show that Mr. Nemser represented Esy Kanov.

Mr. Tartalsky: I object to it if it is not a court record.

Mr. Stout: The object of the offer is to show that Mr. Nemser not only represented at one time the plaintiff in this action—

Mr. Tartalsky: I object to the offer on the ground it is not a court record and improperly offered in evidence.

Q. Mr. Gold, I show you a paper which purports to be a notice in this case of Jack Manowitz against Esy Kanov and others and that notice was served upon Saul Nemser? A. Yes, by him.

Q. Whom did Saul Nemser at that time represent or purport to represent? A. Louis Feinstein and Esy Kanov.

Q. And at the time that that notice was served upon Mr. Nemser, this pretended assignment of judgment has been made by Esy Kanov to Louis Feinstein? A. That is right.

Mr. Stout: I offer this in evidence to show that Mr. Nemser represented both of these parties, the assignor and assignee.

Mr. Tartalsky: This is very singular indeed. The order upon which the release of the levy was made is dated March 9, 1928, and what they are purporting to offer now is a notice dated November 7, 1929, and is no part of the order in this cause. I want to object on the further reason that there is no suit pending in this cause in the court that I know of wherein Jack Manowitz is plaintiff, against Esy Kanov and Louis Feinstein. I further object on the ground that this is merely a notice that a certain application would be made on November 15, 1929, and so far as I know and so far as the record in this cause indicates, no

action was taken on the notice and it is therefore an empty thing.

By Commissioner: Your objection is it is not material to this issue. Mr. Stout is offering the instrument merely to disclose the fact that Mr. Nemser represented the parties.

Mr. Tartalsky: It already appears of record in the execution which was offered in evidence that Mr. Nemser was the attorney for Louis Feinstein and therefore this is purely cumulative.

By Commissioner: Notice offered in evidence and marked Exhibit D-10.

Q. Mr. Gold, did you make a search in the County Clerk's Office, I mean in the County Register's Office, to ascertain if there had been any transaction between any of the defendants in this suit? A. I did.

Q. What did your search disclose?

Mr. Tartalsky: I object to it on the ground if he made a search of the records, the records would indicate what the situation is and they are the best evidence.

By Commissioner: It is stipulated between counsel there is on record a deed bearing date after the judgment was rendered in this cause, from Morris Belagoor and Rose Belagoor to Esy Kanov and Jacob Gerber, granting one-third interest of certain property on Monmouth Street to the said Esy Kanov and Jacob Gerber, which deed was acknowledged before David M. Klausner as Master in Chancery of the State of New Jersey, and the male parties to that deed are the co-defendants in this judgment.

Deposition of Jacob Gold.

JACOB GOLD, being called as a witness for Mr. Tartalsky, being duly sworn, testified as follows:

BY MR. TARTALSKY:

Q. Mr. Gold, you were the attorney for the defendant German, who presented the order which has been marked in evidence here as Exhibit D-8, which was made on March 9, 1928, whereby Judge Cleary released the levy on the moneys of Mr. German in the Commercial Trust Company? A. Yes, sir.

Q. And you say you have searched the records in this file? A. Yes, sir.

Q. Did you present to Judge Cleary or did you find anything in the files of the County Clerk's Office, any petition or affidavits or written documents whatsoever, justifying the statement in the recital part of the order that this judgment in the cause has been fully paid and satisfied?

Mr. Stout: I object to the question whether this witness found any documents as immaterial to this issue.

Question withdrawn.

Q. Mr. Gold, did you present to Judge Cleary any petition signed by either Mr. German or yourself? A. No, sir, presented notice signed by myself.

Q. Did you present any affidavit? To Judge Cleary?

Mr. Stout: I think the proper examination is what did he present or what didn't he present.

Mr. Tartalsky: I insist upon the question.

Mr. Stout: I object to it.

A. No, sir.

Q. Did you present any written papers whatsoever other than the notice to Judge Cleary? A. Any written papers, no, sir.

Q. Did you present any testimony or depositions to Judge Cleary? A. Yes, sir.

Q. What testimony and depositions did you present?

Mr. Stout: Mr. Goldenhorn was sworn and testified substantially to the same thing said here yesterday.

Q. Was there a stenographer in the court room? A. I don't know, I assume there was.

Q. Was there any record made of any testimony or evidence presented to Judge Cleary relating to that part of the order which says it further appearing to the Court that the judgment taken in this cause has been fully paid and satisfied? A. Any record made, I don't know, only the order.

Q. What notice did you serve? A. Served notice on the attorney for the plaintiff who at that time was Raskin, Hornstein & Ruskin and the only people in the suit.

Q. Did you know that Raskin, Hornstein & Ruskin were no longer in the case and that the judgment had been assigned? A. No, sir, I didn't have any knowledge of it.

Q. Did you know Kanov received $10,000 and received an assignment? A. No, sir.

Q. Were you in Mr. Goldenhorn's office at the time this case was tried? A. No, sir.

Q. Did you have any knowledge of the fact that this case was tried and judgment recovered for $24,000? A. Yes, sir.

Q. And did you have knowledge also that Mr. Kanov paid $10,000 for an assignment? A. For an assignment, no. I know some one paid $10,000.

Q. You know just so far as the plaintiff in the action was concerned that he had no other or further interest? A. How did I know that?

Q. You knew the plaintiff had received $10,000 and therefore the plaintiff would have no further interest in the case? A. I knew that the plaintiff had been satisfied, that the judgment had been satisfied, and that my client, Benny German, was no longer liable under what I considered the law to pay any part of that judgment.

Q. Didn't you know that there was an assignment of the judgment made in the case? A. I did not.

Q. Didn't Mr. German consult you and ask you whether or not he would be obliged to pay in spite of the fact that the assignment was made? A. No, sir, I did not.

Q. Didn't you advise Mr. German that he would not be liable to Mr. Kanov for any part of the amount which he had paid? A. I think that is a matter of privilege. I will not answer it.

Q. Do you know that Mr. Nemser represented Mr. Kanov? A. Yes, sir.

Q. Why didn't you serve notice of this application upon Mr. Nemser?

Question withdrawn.

Q. Mr. Gold, why didn't you provide in the order that the judgment be cancelled of record if the judgment was paid and satisfied?

Mr. Stout: The witness is not to be interrogated as to those questions between him and his client.

A. I assumed that an order reciting the fact that the judgment had been fully paid and satisfied entered in the records of the county Clerk's office in the book of judgments and in the Sheriff's office would be notice to anybody.

Q. Even though no part of the order itself directs that the judgment be satisfied? A. It is an order of the court.

Question withdrawn.

Mr. Stout: I do not object, if you offer that letter, to the form of the proof, but I say it has no relevancy or materiality as to the issues involved in this case.

Mr. Tartalsky: Mr. Stout has no objection to the form of the proof and the letter which I am about to offer, he objects to its materiality, and relevancy. The purpose of the offer is Mr. Stout has offered in evidence a letter in the files of the office of the Sheriff from Mr. Hornstein, who was the attorney for the plaintiff, Manowitz, in which letter some reference is made that the claim is satisfied and I therefore offer a letter to show that on May 17, 1928, Mr. Hornstein was attorney for the plaintiff, and requesed that the assignment of the judgment be recorded, and therefore it

shows that Mr. Hornstein, who was the attorney for the plaintiff, knew that an assignment of the judgment had been given. Letter addressed to Harry Kanov by Insley, Vreeland & Decker, bearing date May 17, 1928, with a postscript written thereon addressed to Saul Nemser, signed by Hornstein, dated May 29, 1928, is offered in evidence and marked Exhibit P-4.

Mr. Stout: I do not object to the form of the proof but I do to the content as being incompetent, irrelevant and immaterial to the issues in this matter.

Filed Clerk's Office May 9, 1930,
Hudson County, N. J.

GUSTAV BACH,
Clerk.

Exhibit D-3.

RELEASE OF JUDGMENT FROM REALTY.

Release dated May 17th, 1928.

ESY KANOW
to
HARRY KANOV

THIS INDENTURE, made the seventeenth day of May in the year of Our Lord One Thousand Nine Hundred and Twenty-eight.

BETWEEN ESY KANOW, of the City of Jersey City, in the County of Hudson and State of New Jersey, of the first part;

AND HARRY KANOV, of the City of Jersey City, in the County of Hudson and State of New Jersey, of the second part;

WHEREAS, JACK NANOWITZ, on the twenty-first day of October in the year of Our Lord One thousand nine hundred and Twenty-seven, recovered a judgment in the Hudson Circuit Court against ESY KANOW, HARRY KANOV, MORRIS BELAGOUR, BENNY GERMAN and SAMUEL GERBER, for the sum of twenty-four thousand dollars and cents and seventy-nine dollars and sixty cents, cost of suit, as by the record thereof will appear;

And which judgment has been assigned to said ESY KANOV AND ABOUT TO BE RECORDED.

AND WHEREAS, the said party of the first part, at the request of the said party of the second part

has agreed to release the lands hereinafter described whereof the said party of the second part is seized from the lien and effect of said judgment;

NOW THIS INDENTURE WITNESSETH, that the said party of the first part, in pursuance of the said agreement and in consideration of one dollar, to him duly paid at the time of the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has released, quit-claimed and forever discharged, and by these presents does release, quit-claim and forever discharge, unto the said party of the second part, and to his heirs and assigns forever. ALL that certain tract or parcel of land and premises, situate in the third Aldermanic District (formerly 4th Ward) of Jersey City, in the County of Hudson and State of New Jersey, known and distinguished as part of lot No. 9 in block no. 175, as the same is laid down on a certain map of that part of the Town of Jersey commonly called Aharsimus, made in the year 1804 by JOSEPH F. MANGIN FOR JOHN B. COLES AND FILED in the Clerk's Office of the County of Bergen, which said part of lot No. 9, is more particularly described as follows:

BEGINNING on the northerly side of Third Street (formerly South Sixth St.) distant one hundred feet (100) west from the northwest corner formed by the intersection of Erie and Third Streets; thence running northerly and parallel with Erie Street, one hundred feet (100) ft.; thence westerly and parallel with Third Street eighteen feet nine inches (18 ft. 9 in.), thence southerly and parallel with Erie Street, one hundred (100) feet to the northerly line of Third Street,

eighteen feet and nine inches (18 ft. 9 in.) to the place of beginning.

TOGETHER with the hereditaments and appurtenances thereto belonging; and all the right, title and interest of the said party of the first part, of, in and to the same, to the intent that the lands hereby conveyed may be discharged from the lien and effect of such judgment.

TO HAVE AND TO HOLD, the lands and premises hereby released and discharged, to the said party of the second part, his heirs and assigns, to his and their only proper use, benefit and behoof forever, free, clear and discharged of and from all lien and claim under and by virtue of the aforesaid judgment.

IN WITNESS WHEREOF, the said party of the first part has hereunto set his hand and seal the day and year first above written.

ESY KANOW.
(Seal)

Signed, sealed and delivered in the presence of

SAUL NEMSER.

Exhibit D-3.

STATE OF NEW JERSEY }
COUNTY OF HUDSON } SS.:

BE IT REMEMBERED, that on this 15th day of June, in the year of Our Lord One Thousad Nine Hundred and Twenty-eight, before me, a Master in Chancery of N. J., personally appeared ESY KANOW, who, I am satisfied is the grantor in the within release named; and I having first made known to him the contents thereof, he acknowleded that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed.

SAUL NEMSER,
A Master in Chancery of New Jersey.

Received in the Office and recorded June 23, 1928 @ 11:06 A. M. #969.

STATE OF NEW JERSEY }
COUNTY OF HUDSON } SS.:

I, CHARLES F. X. O'BRIEN, Register of the County of Hudson, do hereby Certify that the foregoing is a true and correct copy of a certain Release as the same is on Record in my Office in Book 79 of Releases on page 78 &c.

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal this 21st day of February A. D., 1930.

CHARLES F. X. O'BRIEN,
Register.

By CHARLES M. AUSTIN,
Deputy Register.

(Seal)

Exhibit D-4.

EXECUTION.

HUDSON COUNTY—ss. The State of New Jersey to the Sheriff of the County of Hudson. GREETING:

WE COMMAND YOU, That of the goods and chattels of ESY KANOV, HARRY (L. S.) KANOV, MORRIS BELAGOOR, BENNY GERMAN and SAMUEL GERBER, Defendants, in your County you cause to be made the sum of Twenty-four thousand seventy-nine dollars and sixty cents, which JACK MANOWITZ, Plaintiff, lately in our Circuit Court in Jersey City, in and for our said County of Hudson, recovered against the said Defendant as well for his damages which he has sustained, on occasion of the non-performance of certain promises and undertakings by the said defendant then lately made to the said plaintiff as for costs and charges by him about his suit in that behalf expended, whereof the said defendants were convicted as appeared to us of record; and if sufficient goods and chattels of the said defendant in your County you cannot find where of to make the moneys aforesaid, then and in that case we command you that you cause the whole, or the residue as the case may require, of the moneys aforesaid, to be made of the lands, tenements, hereditaments and real estate of the said defendant in your County whereof, were seized on the 21st day of October in the year of our Lord one thousand nine hundred and seven or at any time afterwards, in whose hands soever the same may be; and have you those moneys before our Circuit Court aforesaid, in Jersey City aforesaid on the second Tuesday, of December next, to render unto the said plaintiff for his damage and costs aforesaid, and have you then there this writ.

Exhibit D-4.

WITNESS, JAMES F. MINTURN, a Judge of our said Court, in Jersey City, aforesaid, the 21st day of October in the year of our Lord one thousand nine hundred and twenty-seven.

JOHN J. McGOVERN,
Clerk.

Levy Damage, $24,000.
Costs, 79.60.
Int. from Oct. 21, 1927, besides Sheriff's Execution Fees.

RASKIN, HORNSTEIN & RASKIN,
Attorneys.

BOOK 26 of Ex., page 266.

Exhibit D-5.

RELEASE FROM JOSEPH MANOWITZ TO LOUIS MANOWITZ.

To all to whom these Presents shall come or may concern,

Greeting:

Know Ye, That WE, JOSEPH MANOWITZ, residing at No. 340 Second Street, in the City of Jersey City, and LOUIS MANOWITZ, residing at No. 284 Third Street, in the City of Jersey City for and in consideration of the sum of One ($1.00) dollar, lawful money of the United States, to us in hand paid by ESY KANOV, HARRY KANOV, MORRIS BELAGOOR, BENNY GERMAN, SAMUEL GERBER and HARRY STEINBERG, all of the same place, have remised, released, and forever discharged, and by these Presents do for ourselves and our several heirs and assigns, heirs, executors and administrators, remise, release and forever discharge the said Esy Kanov, Harry Kanov, Morris Belagoor, Benny German, Samuel Gerber and Harry Steinberg of and from all and all manner of actions and suits, cause and causes of action or suit, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, torts, damages, judgments, extents, executions, claims and demands whatsoever in law or in equity, which against them or any of them, we ever had, now have or which we or our several heirs and assigns, hereafter can, shall or may have for, upon or by reason of any matter, cause or thing whatsoever, from the beginning of the world to the day of the date of these Presents.

Exhibit D-5.

AND particularly by reason of any matter or thing set forth in a certain suit pending in the New Jersey Supreme Court (Hudson County, summons of which was tested September 15, 1924.)

IN WITNESS WHEREOF, we have hereunto set our hands and seals the eighth day of February, one thousand nine hundred and twenty-eight.

JOSEPH MANOWITZ, (L. S.)
LOUIS MANOWITZ, (L. S.)

Sealed and delivered in the presence of

ESTHER COHEN.

Exhibit D-5.

STATE OF NEW JERSEY }
COUNTY OF HUDSON } SS.:

On the Eighth day of February in the year one thousand nine hundred and twenty-eight, before me personally came JOSEPH MANOWITZ and LOUIS MANOWITZ, who I am satisfied are the grantor in the within release named and who executed the same, and I having first made known to them the contents thereof they did each acknowledge that they signed, sealed and delivered the same as their voluntary act and deed for the uses and purposes therein expressed.

ESTHER COHEN,
Notary Public of New Jersey.

Exhibit D-5.

CHARLES HERSHENSTEIN. S. C. C.

Feb. 25, 1930.

Filed Clerk's Office May 9, 1930.
Hudson County, N. J.

GUSTAV BACH,
Clerk.

Exhibit P-4.

Jersey City, N. J., May 17, 1928.

MR. HARRY KANOV,
303 York Street,
Jersey City, N. J.

Dear Sir:

We enclose herewith release of judgment to be executed by Esy Kanov, who should sign opposite the red seal. His signature should be witnessed by and the release acknowledged before a Notary Public who should attach his seal. The assignment of this judgment to Esy Kanov does not appear of record and should be returned to us with the release so that both papers can be recorded at the same time.

Yours turly,

INSLEY, VREELAND & DECKER.

B:S

Saul:

Will you kindly take care of this for me? Armstrong has the assignment of judgment. If you will be good enough to have Esy Kanov secure it I will see that it is delivered to the firm of Insley *et als.* for recording.

Appreciating your co-operation, I am

Sincerely,

5/29/28. HORNSTEIN.

Certificate of Commissioner.

This is to certify that the annexed depositions were taken before me and in my presence, having first designated Mary T. Freeman as the stenographer to stenographically report the testimony and who was duly sworn by me to transcribe the same to the best of her ability.

And I do further certify that the exhibits offered in evidence are returned with these depositions with the exception of the original records which have been returned to the Sheriff's Office and to the County Clerk's Office, which records are to be transmitted to the Court with the return of these depositions.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 27th day of February, 1930.

CHARLES HERSHENSTEIN (L. S.)
Supreme Court Commissioner.

Memorandum.

HUDSON COUNTY CIRCUIT COURT.

JACK MANOWITZ,
Plaintiff,

vs.

ESY KANOV, HARRY KANOV, MORRIS BELAGOOR, BENNY GERMAN and SAMUEL GERBER,
Defendants.

ACKERSON, *J.*

This matter comes before me upon a rule obtained by the defendant Benny German, and directing Louis Feinstein, assignee of the defendant Esy Kanov, to show cause why the judgment for Twenty four Thousand ($24,000.00) dollars, recovered by the plaintiff Jack Manowitz against all the defendants herein and assigned by said plaintiff to the defendant Esy Kanov and by him assigned to said Louis Feinstein should not be cancelled of record and the last execution issued thereon by the said Louis Feinstein returned by the Sheriff of Hudson County for cancellation, and the property levied upon by virtue of said execution released from such levy.

From the testimony taken under the rule and from the records of the Court and in public offices of the County of Hudson, it appears that the aforesaid judgment was recovered by the plaintiff, Jack Manowitz against all of the above named defendants on October 21st, 1927, in a tort action wherein all of the defendants were charged as joint tort feasors with having conspired to drive the plaintiff out of business as a live poultry dealer. Execution

was immediately taken out and a levy made upon property of the defendants, including that of the defendant Benny German.

On February 15, 1928, the defendant Esy Kanov, paid the plaintiff herein Ten thousand ($10,000.00) dollars for said judgment and took a written assignment thereof to himself on the same date, which assignment was not recorded in the Hudson County Clerk's office until June 23, 1928.

In the meantime, on March 9th, 1928, the defendant Benny German, upon notice to the plaintiff Jack Manowitz, obtained from the Judge of the Circuit Court, before whom the action was tried, an order in which it is recited that said judgment had been paid and satisfied, and directing the Sheriff to forthwith release all levies and attachments made by virtue of said execution.

Thereafter, on October 2nd, 1929, the said Esy Kanov assigned said judgment in writing to Louis Feinstein for the expressed consideration of One Dollar and other good and valuable considerations, which assignment was recorded in said office on October 3rd, 1929. On October 4th, 1929, said Louis Feinstein, the assignee of the judgment debtor, Esy Kanov, caused another execution to be issued on said judgment against all of the defendants for the full amount thereof, and a levy thereunder was made upon the personal property of the defendant, Benny German, who had not contributed anything to the sum of Ten thousand ($10,000.00) dollars, which had been paid by the defendant, Esy Kanov to the plaintiff. In this situation the defendant, Benny German, applied for and obtained the aforesaid rule to show cause directed to the said Louis Feinstein as aforesaid.

Memorandum.

Several reasons are urged by the defendant Benny German in support of this rule, among them being the proposition that the judgment in question was adjudged to be satisfied by the aforesaid order of the Circuit Court Judge made on March 9th, 1928, which released all levies under the first execution above mentioned. It seems sufficient, however, to deal with the interesting and fundamental question of whether a joint tort-feasor who has purchased the judgment from his judgment creditor and taken an assignment thereof to himself individually, may reassign the judgment to a third party so as to enable the latter to issue execution thereon and recover as against a non-contributing joint tort-feasor.

The rule is firmly settled in this state that there can be no contribution between joint tort-feasors, and this is so whether the wrong is the result of force or procured merely from ignorance or carelessness, the reason being that the law will not undertake to adjust the burdens of misconduct. Newman vs. Fowler, 37 N. J. L. 89, Public Service Ry. Co. vs. Matteucci, 143 Atl. Rep. 221 (E. & A.).

And it is also generally accepted as settled that one judgment debtor, upon paying the judgment recovered against himself and others as joint tort-feasors, and taking an assignment thereof in his own name individually, does not acquire thereby any right of contribution as against the non-contributing Judgment debtors,

34 C. J. Secs. 1063 and 1064
Boyer vs. Bolender, 129 Pa. 324, 18 Atl. Re 127
Adamas vs. White Bus Line, 184 Cal. 710 at 713
195 Pa. Rep. 289,

and the case of Brown vs. White, 29 N. J. L. 514, holding that the payment of a judgment by one joint debtor will not operate to satisfy the judgment where it appears that the payment was not intended to have that effect, is not contrary to the general rule previously expressed, because the judgment in the last cited case arose out of a contractual obligation where the right of contribution is, of course, recognized, and also because the Court was very careful to specify that it was not "called on to determine what the equities between" the joint judgment debtors were "but simply whether what had been done amounted to a legal satisfaction of the judgment."

Since therefore, the judgment debtor Esy Kanov, could not enforce contribution from his joint tort-feasors, either through the medium of execution on the assigned judgment or by a new suit for contribution, the last question presented, assuming for the purpose of argument only that the assignment of said judgment to him did not amount to an outright satisfaction thereof, whether he could by assigning it for a valuable consideration to said Louis Feinstein, confer upon him the right to collect thereon from the defendant Benny German.

Here, however, we are confronted by the universal rule that the assignee of a judgment takes it subject to all the equities, defenses and agreements subsisting between the original parties, whether he had notice of them or not, acquiring in this respect no stronger rights than his assignor possessed,—

23 C. G. C. 1422.
34 C. J. 646, Sec. 996.
Traphagen vs. Lyons, 38 N. J. E. 613.
Starr vs. Haskins, 26 N. J. E. 414.
Stout vs. Vankirk, 10 N. J. E. 78.
Cook vs. McCahill, 41 N. J. E. 69.

Memorandum.

The assignee of a judgment succeeds only to the rights of his assignor, and cannot claim protection against subsequent equities which were binding on his assignor.

Mayor & Alderman of Wetumpka vs. Wetumpka Whard Co., 53 Ala. 611.

The assignee stands in no better position than his assignor stood at the time of the assignment, 34 C. J. 641, Sec. 986, and page 651, sec. 999.

Since therefore, the first assignee of this judgment, Esy Kanov, one of the joint tort-feasors, could not have collected on the judgment because of the rule against contribution among joint tort-feasors, and since his assignee, Louis Feinstein, stands in no better position than his assignor, it follows that Feinstein cannot collect upon the judgment against the defendant German. He cannot be heard to complain, however because he knew or should have known by referring to the judgment record itself, that his assignor was one of the judgment debtors and a joint tort-feasor who could not collect on the judgment as against his fellow wrongdoers. To hold otherwise would be to completely destroy the effect on the rule against contribution among joint tort-feasors, because otherwise in cases of judgments against such parties, the one who first purchased and took an assignment of the judgment, could sell it to a third party and thus indirectly secure contribution, or perhaps indemnification, because the assignee under such circumstances could not successfully issue execution against his assignor, as to whom the judgment would have been paid, McIllvane vs. T. J. M. Cont. Co., 147 Atl. Rep. (N. J.) 333, but would have to issue it against the other tort-feasors, and, if he

so desired, for the full amount of the judgment. Such a situation would give complete indemnity to the tort-feasor first purchasing the judgment. This would be as much against public policy as to permit contribution to be obtained directly. The rule against contribution among joint tort-feasors is not based on the ground that contribution in such a case is inequitable. Indeed the application of the rule often works injustice as between the wrong-doers. The rule rests on considerations of public policy, it being against the policy and maxims of the law to adjust equities between wrong-doers, or to permit a person to found an action of his own wrong-doing, 13 C. J. 829, sec. 19.

Since the assignee, Louis Feinstein, cannot enforce the judgment in question against the defendant Benny German, the latter is entitled to have it cancelled as to himself and a rule to show cause is the proper practice to bring the matter before the Court even in the hands of an assignee, First National Bank vs. Hoffman, 68 N. J. L. 245, McIlvane vs. T. J. M. Contracting Co., *supra*. It follows, therefore, that the execution should also be returned into Court and cancelled, and the property levied on under said execution released therefrom.

Something was said at the argument to the effect that the property of said Benny German levied on under said execution had been sold by the Sheriff at public vendue after the issuance of the rule to show cause. If this is so there is no competent proof thereof before me to show it, nor does said rule ask for relief in that event, and I cannot, therefore, invoke the practice suggested in Bruere vs. Britton, 20 N. J. L. 268, and order the proceeds arising from any such sale restored.

Memorandum.

In making the rule to show cause absolute, however, it will be without prejudice to the right of the defendant Benny German, if the facts make it necessary so to do, to apply for further relief in the premises upon proper proof.

HENRY E. ACKERSON, JR.,
Judge.

Filed Clerk's Office, May 8, 1930.
Hudson County, N. J.
GUSTAV BACH, Clerk.

Order.

HUDSON COUNTY CIRCUIT COURT.

JACK MANOWITZ, Plaintiff, vs. ESY KANOV, HARRY KANOV, MORRIS BELAGOOR, BENNY GERMAN and SAMUEL GERBER, Defendants.	Action at Law.

A Rule to Show Cause having been entered in this cause on the 21st day of November, 1929, and this cause having been argued by Jacob Gold, of Sepenuk & Gold, and Edward Stout, of counsel for defendant, Benny German, and Samuel Tartalsky, of O'Brien & Tartalsky, of counsel for Louis Feinstein, assignee of defendant, Esy Kanov, and depositions having been taken in the above cause, and the Court having considered the same and the arguments of counsel and the briefs and memorandums filed by counsel in this cause,

It is thereupon on the 16th day of May, 1930, on motion of Jacob Gold, ORDERED, that the said rule to show cause be and the same is hereby made absolute.

And it is further Ordered that the judgment of Twenty-four Thousand ($24,000) Dollars recovered by the plaintiff, Jack Manowitz, against all the defendants above named, and assigned by the said plaintiff to the defendant Esy Kanov, and by him assigned to said Louis Feinstein, shall be cancelled of record by the Clerk of the County of Hudson as to the defendant, Benny German.

Order.

And it is further Ordered that the Sheriff of Hudson County shall forthwith deliver the execution issued in the above entitled cause on the 4th day of October, 1929 to the Clerk of the County of Hudson for cancellation as to the defendant German.

And it is further Ordered that the Sheriff shall forthwith release all of the property of the defendant, Benny German, levied upon by him by virtue of said execution from the force and effect of said levy.

And it is further Ordered that the making of this rule to show cause absolute shall be without prejudice to the right of the defendant, Benny German, if the facts make it necesary so to do to apply for further relief in the premises upon proper proof.

And it is further Ordered that the said rule to show cause be and the same is hereby made absolute with costs to the defendant Benny German.

And it is further Ordered that a copy of this order, which may be certified by the attorneys for the defendant, Benny German, be served upon the attorneys for Louis Feinstein, Assignee of Esy Kanov, within three (3) days from the date hereof.

HENRY E. ACKERSON, JR.,
Judge of the Hudson County Circuit Court.

Order actually entered May 16th, 1930.

Service of a copy of the within acknowledged this 16th day of May, 1930.

O'BRIEN & TARTALSKY.

Filed Clerk's Office May 16, 1930.
Hudson County, N. J.

New Jersey Court of Errors and Appeals

JACK MANOWITZ,
Plaintiff,

vs.

ESY KANOV, HARRY KANOV, MORRIS BELACOOR, BENNY GERMAN and SAMUEL GERBER,
Defendants.

BRIEF FOR DEFENDANT, BENNY GERMAN, ~~APPELLEE.~~ Respondent

Facts.

This action was instituted in the Hudson County Circuit Court by Jack Manowitz, plaintiff, against Esy Kanov, Harry Kanov, Morris Belagoor, Benny German and Samuel Gerber, defendants, as joint tort feasors on a complaint alleging that these defendants conspired among themselves to secure exclusive control of the live poultry business in Jersey City to the injury and damage of plaintiff who was engaged in a similar business. The case was tried at the Hudson Circuit before Honorable Frank L. Cleary and a jury, October 21st, 1927, resulting in a verdict in favor of the plaintiff and against all of the defendants generally in the sum of $24,000 and judgment was entered accordingly (Case, 4 and 5).

On the same day that judgment was entered, execution was issued thereon directed to the Sheriff of Hudson County, who, by virtue thereof, levied

upon the goods and chattels of the defendants, including the defendant Benny German (Case, p. 83). Thereafter, and within the time allowed by law, defendants obtained a rule to show cause why the verdict should not be set aside, reserving all exceptions taken by them at the trial. Subsequently the defendant, Esy Kanov, without consulting the defendant, Benny German, undertook to settle the judgment in question and, on February 15th, 1928, satisfied the same by paying to I. Faerber Goldenhorn, plaintiff's attorney, the sum of $10,000. Thereupon plaintiff made and delivered to defendant, Esy Kanov, a release of the judgment and discontinuance of the action in favor of all of the defendants, which release and discontinuance were never filed or recorded (Case, pp. 22-33-42).

After being informed of the satisfaction of the judgment as aforesaid, the defendant, Benny German, upon due notice to the plaintiff obtained from Judge Cleary on March 9th, 1928 an order (Case, p. 14), reciting the fact that the judgment had been duly paid and satisfied, and directing the Sheriff to forthwith release all levies and attachments made by virtue of the execution aforesaid. The order was immediately filed with the Clerk of the Court, and duly entered in the Minutes thereof, and a true copy of the order served upon the Sheriff of Hudson County, who thereupon released all levies and attachments made by him under the execution (Case, p. 83). The Sheriff, however, failed to make return of the execution according to law.

On June 23rd, 1928 and after the filing and entry of the last-mentioned order, defendant, Esy Kanov, caused to be recorded an assignment by the plaintiff to him of the judgment (Case, pp. 6-8). On May 17th, 1928 the defendant, Esy Kanov, gave a release to his joint tort feasor defendant, Harry Kanov (Case, p. 79). On October 3rd, 1929 defendant,

Esy Kanov, attempted to assign this judgment to one Louis Feinstein (Case, pp. 9-11).

On October 4th, 1929 Saul Nemser, Attorney for Louis Feinstein, caused an alias execution to be issued against all of the defendants including the defendants, Esy Kanov and Harry Kanov, both of whom had contributed to the satisfaction of the judgment. This alias execution was issued without the original execution being returned to court. By virtue of the alias execution the Sheriff of Hudson County, to whom it was directed, levied upon the goods and chattels of German, and same were advertised for sale. Upon receiving notice of this levy, German applied to Judge Cleary for and obtained a rule to show cause why the alias execution should not be set aside as having been improvidently, illegally and erroneously issued (Case, p. 23). The rule provided for a stay of proceedings on the alias execution pending the hearing on the rule to show cause. Upon being served with a copy of this rule Louis Feinstein, by his attorney, Samuel Tartalsky, on notice to German, applied to Judge Cleary to vacate the stay of the rule. On this application the court ordered that the stay provided for in the rule be vacated unless German file a bond with sufficient surety in favor of Louis Feinstein (Case, p. 25). German was unable to provide such a bond, and the stay was vacated and his goods and chattels, consisting of real mortgages of a value of $14,000 and a business of the value of $2,000 were sold November 27th, 1929, as advertised, under said alias execution for the sum of $3,150.00.

On this rule to show cause (Case, p. 23), testimony was taken before a Supreme Court Commissioner. Thereupon Judge Henry E. Ackerson, Jr., filed an opinion (Case, pp. 90-96), determining that by reason of the assignment of the judgment from the plaintiff to Esy Kanov, one of the defendants,

the judgment was satisfied and should therefore be satisfied of record. From this order directing the cancellation of the judgment (Case, pp. 97-98), Louis Feinstein appealed directly to this court.

Argument.

We respectfully urge that the court below did not err in making the order (Case, pp. 97-98) and that the defendant Benny German was entitled to the relief set out in the order.

The points will be considered in the following order:

Point I.

The grounds of appeal relied upon by the appellant for reversal do not definitely point out with sufficient precision the nature of the error complained of.

Point II.

Louis Feinstein, assignee of judgment creditor, is not an *innocent* purchaser for value of the judgment.

Point III.

The court below had jurisdiction to hear the matter and to give the proper relief.

Point IV.

The order of March 9th, 1928, reciting that the judgment in question had been fully paid and satisfied, being in full force and effect, the alias execution should not have issued on said judgment and is therefore void.

POINT V.

The alias execution should have been set aside because the original execution had not been returned to court.

POINT VI.

Payment of the judgment in question by Esy Kanov, one of the joint tort feasors, satisfied it as to all the defendants.

POINT VII.

The alias execution should have been set aside because it was issued against the property of all the defendants.

POINT VIII.

Since there is no contribution between joint tort feasors, the one paying a tortuous judgment cannot take an assignment thereof to himself and then enforce it against his co-defendants.

POINT IX.

Appellant has not followed the procedure outlined by him in an Act Concerning Judgments, 3 Compiled Statutes, page 2962.

POINT X.

The decision of the court below is based on good sound public policy.

POINT I.

The grounds of appeal relied upon by the appellant for reversal do not definitely point out with sufficient precision the nature of the error complained of.

Counsel for appellant sets forth, mere broad assertions, that the court below erred, without stating in what particular the court erred. This we submit is improper. It is a fundamental rule, that the error complained of must be definitely pointed out so that court and counsel may be apprised of the injury complained of.

Hintz v. *Roberts,* 98 L. 768;
Lutlopp v. *Heckman,* 70 L. 272;
O'Brien v. *Staiger,* 129 Atl. 485.

POINT II.

Louis Feinstein, assignee of judgment creditor, is not an *innocent* purchaser for value of the judgment.

As to the contention of counsel for the appellant that Feinstein is an innocent holder of the judgment, we say that the record clearly discloses that Feinstein knew the history of this tortuous judgment, its payment by one of the tort feasors, and the subsequent proceedings in respect thereto. However, on the question of innocent Feinstein, it is significant to note that the release of the judgment dated May 17, 1928, of defendant Esy Kanov

in favor of the defendant, Harry Kanov, recites the pretended assignment of the judgment by plaintiff Manowitz to defendant Esy Kanov. This release was acknowledged before Saul Nemser, as a Master in Chancery of New Jersey, who then knew that Esy Kanov (a joint tort feasor) had satisfied the judgment. Mr. Nemser afterward represented Feinstein, for he appears as attorney on the alias execution issued October 4, 1929.

In other words, Feinstein, through his attorney, Nemser, knew on October 2, 1929, when Esy Kanov attempted to assign the judgment to him that Esy Kanov (one of the joint tort feasors) had paid the judgment and took the pretended assignment thereof; that Esy Kanov had previously released Harry Kanov and by the record of which he had constructive [redacted], if not actual, notice, he was informed that judgment had been purchased by a joint tort feasor and that another joint tort feasor had been released therefrom.

It is also important to note that so far as Feinstein was concerned, the order of March 9, 1928, reciting that the judgment had been fully paid and satisfied, was made before [redacted] the assignment to Feinstein and was on file and in full force and effect when the judgment was assigned to him, and he took it with notice that the judgment had been paid and satisfied by the joint tort feasor, Esy Kanov. There was also on record the letters offered (Case, p. 69) from the attorneys for the plaintiff, notifying the Sheriff of the County of Hudson that this judgment had been fully paid and satisfied. We think the point well taken as expressed in the opinion of the court below filed in this cause: "He cannot be heard to complain, however, because he knew or should have known by referring to the judgment on record that his assignor was one of the judgment debtors and a joint tort-feasor and could not collect

on the judgment as against his fellow wrongdoers. To hold otherwise would be to completely destroy the effect on the rule against contribution among joint tort feasors".

POINT III.

The Court below had jurisdiction to hear the matter and to give the proper relief.

It is fundamental that a court of law has jurisdiction over its records and judgments, and has the right to set aside all proceedings taken thereon which are illegal or erroneous.

If the alias execution in the instant case were improvidently, illegally and erroneously issued, the proper practice was to obtain a rule to show cause why the execution and all proceedings taken thereon should not be set aside.

In *Bruere* vs. *Britton,* 20 N. J. L. 268, at 269, Chief Justice Hornblower said, in respect to setting aside irregular executions:

> "The application should be to set aside the execution as irregularly issued and if money has been raised or paid upon it and the court sustain the application, they would order the money to be restored and, if necessary, enforce that order by attachment."

The rule is laid down in 23 C. J. 535, Sec. 414:

> "Then jurisdiction of the court to entertain a motion to quash is unquestioned and has been maintained in numerous cases, since every court has the inherent power for the advancement of justice to correct the errors of ministerial officers and to control its own process.

> A motion to quash is a proper remedy, as well when the process is absolutely void as when it is merely voidable."

In the case of *Johnston* vs. *Bowers,* 69 N. J. L. 544 at 547, the court said:

> "It is the established practice of courts of law to exercise such control over their own proceedings, judgment and process, as to see that justice and equity are done with respect to the disposition of the proceeds of a judgment."

See also

McLaughlin vs. *Cross,* 68 N. J. L. 599 at 601.

In *Traphagen* vs. *Lyons,* 38 N. J. Eq. 613, the Court of Errors and Appeals held that when a judgment, once paid but not satisfied of record, is assigned by a judgment creditor the assignee takes it subject to all defenses and equities which the judgment debtor had against the assignor.

Therefore, in the instant case, Louis Feinstein, by the pretended assignment of the judgment to him by the defendant, Esy Kanov, took it subject to all defenses and equities which German could interpose against his co-tort feasor, Esy Kanov, who had paid and satisfied the judgment in favor of all of the defendants.

It is submitted under this point that the court had jurisdiction to set aside the instant alias execution and did so because it was improvidently, illegally and erroneously issued.

POINT IV.

The order of March 9th, 1928, reciting that the judgment in question had been fully paid and satisfied, being in full force and effect, the alias execution should not have issued on said judgment and is therefore void.

The judgment in question was paid and satisfied by the defendant, Esy Kanov, and the order of March 9th, 1928 recited that fact and directed the Sheriff of Hudson County to release all levies and attachments made by virtue of the original execution issued thereon. This order was immediately filed and entered, and Louis Feinstein took the pretended assignment by defendant, Esy Kanov, to him of this judgment, with notice that the judgment had been paid and satisfied by his assignor, said defendant, Esy Kanov; and so long as this order remained in force and effect neither he nor any ministerial officer of the court had the right or power to ignore it or treat it as a nullity, and cause an alias execution to be issued on this satisfied judgment.

As to the operation and effect of records of judicial proceedings, it is laid down in 15 C. J. p. 979, Sec. 404:

> "The records of the proceedings of a court of record, made and kept pursuant to law, constitute the legal evidence of its judgment, orders and other proceedings. Such records import absolute verity unless or until they are reversed or set aside, and cannot be contradicted within the jurisdiction of the court, nor are they subject to collateral attack."

See also

Claflin vs. *Wolff,* 88 N. J. L. 308.

In view of the existence of the record of the order in the instant case, it is submitted that the alias execution was void in law and that same and all proceedings taken thereon were properly set aside.

POINT V.

The alias execution should have been set aside because the original execution had not been returned to court.

The rule in this State seems to be that although it is irregular to issue an alias execution before the return of a former execution, such irregularity does not render the alias writ void, but voidable.

See

Rammell vs. *Watson,* 31 N. J. Law 281.

Under this rule the alias writ may be set aside as irregular while the original writ is outstanding.

The general rule, as enunciated in 23 C. J. p. 392 Sec. 167b, is:

> "Before an alias or pluries writ can be issued, the writ previously issued with an appropriate return endorsed thereon, must have been returned because plaintiff is not entitled to have two executions upon the same judgment at the same time, and the futility of the previous execution cannot be made to appear, otherwise than by the officer's return."

In the instant case the original execution was still outstanding and the pretended assignee of the judgment creditor was not entitled to an alias execution. Furthermore, the alias execution was properly set aside because the order of March 9th, 1929,

served upon the Sheriff, recites that the judgment in question had been fully paid and satisfied, and the original execution should have been returned accordingly. If it had, there would have been no basis for the alias execution.

POINT VI.

Payment of the judgment in question by Esy Kanov, one of the joint tort feasors, satisfied it as to all the defendants.

Under this point we again reiterate that in the instant case Esy Kanov, one of the joint tort feasors, paid and satisfied the judgment in question and obtained a release therefrom in favor of all of the defendants and an assignment of the judgment to himself. Thereafter he released Harry Kanov, another joint tort feasor, from the judgment.

It is submitted that these transactions of payment and release, extinguished the judgment in favor of all of the defendants.

The rule of law is that the payment of a judgment by one of two joint tort feasors operates as a satisfaction and extinguishment of the judgment as to all.

We contend, in the instant case, that if Louis Feinstein who is a mesne pretended assignee of the judgment debtor recovers from German on the alias execution, it will be either contribution or exoneration, depending upon the amount realized.

It is laid down in 13 C. J. 828, Sec. 18, that:

> "Where one of several wrong-doers has been compelled to pay the damages for the wrong committed, the general rule is that he cannot compel contribution from the others who participated in the commission of the wrong."

This rule is also applied in equity, where Chancellor Pitney said in the case of *Bigelow* vs. *Old Dominion Copper, &c., Co.,* 74 N. J. Eq. 458:

> "But besides, equity does not recognize any right of contribution between joint tort feasors, the reason being that such contribution must be sought, if at all, by an action brought by one against the other and the actor therein is barred by the maxim, *in pari delicto.*"

Furthermore, the party who is compelled to respond and to pay for the injury can have no action for *indemnity* against the other party or parties to the wrongful act.

See

Amalgamated Union Stock Yards Co. vs. *Chicago, &c., R. Co.,* 196 U. S. 217.

In the case of *First National Bank* vs. *Hoffman,* 68 N. J. Law 245, where a prior endorser paid a judgment recovered against him and a subsequent endorser on a promissory note and took an assignment of the judgment for the purpose of undertaking to collect it from the subsequent endorser, the court, in effect, HELD that since there was no right of contribution of the subsequent endorser to the prior endorser, the latter could not, even though he held an assignment of the judgment, enforce it against the subsequent endorser.

In *Rogers* vs. *Cox,* 66 N. J. Law 432 at 434, the court said:

> "In case of joint tort feasance, satisfaction by anyone liable discharges the claim for damages. The injured person is legally entitled to but one satisfaction."

We submit that in the instant case, if the pretended assignee of the judgment in question can recover on the judgment there will be, in effect, two

satisfactions—one to the plaintiff in the first instance, and another to his assignee in the second instance.

In *Spur* vs. *Northern Hudson County R. R. Co.*, 56 N. J. Law 346, Chief Justice Beasley HELD that in case of a joint tort, the person injured, if he accepts satisfaction from one of such tort feasors, cannot sue the other.

We contend that it must follow, from this principle, that if the plaintiff cannot obtain satisfaction from more than one of the joint tort feasors, his assignee cannot recover. Otherwise, where there are five joint tort feasors and a judgment of $24,000 is recovered against them, and one of the joint tort feasors buys the judgment for $10,000 and takes an assignment of the judgment and has execution issued thereon, and undertakes to collect the full amount of the judgment from one of his co-tort feasors (as are the facts in this case) he could proceed as to the others and, if they were financially responsible, recover in all $96,000.

We submit that this is not the law, and that when one tort feasor pays and satisfies the judment creditor, the judgment is satisfied as against all of the defendants, and that the judgment is extinguished and there can be no legal assignment of it to the joint tort feasor who has paid and satisfied it.

It is also to be noted that the judgment creditor executed and delivered to Esy Kanov, a general release of the judgment, in favor of all of the defendants. This, too, satisfied and discharged the judgment as to all the defendants.

See

Rogers vs. *Cox, supra.*

The authorities go even still further and hold that a release of one joint tort feasor releases him and all his joint wrong-doers, because the sealed

release operates to extinguish the cause of action, —here the judgment.

See

Perlsburg vs. *Muller,* 35 N. J. L. J. 202, 299.

POINT VII.

The alias execution should have been set aside because it was issued against the property of all the defendants.

As above pointed out, the judgment in question was paid and satisfied by Esy Kanov, one of the joint tort feasors, who, instead of having the judgment satisfied of record took a pretended assignment thereof from the plaintiff, and thereafter Esy Kanov released Harry Kanov, another tort feasor, from the judgment; and then attempted to assign this satisfied judgment to Louis Feinstein. This was the status of the judgment at the time of issuing the alias execution which was issued against the property of all of the defendants including Esy Kanov and Harry Kanov.

Even if the judgment had been subsisting then against all of the other defendants, it was improper to issue the alias execution against the property of these two defendants when it appeared of record that they had been relieved from the obligation of the judgment.

It has been held in this State that there is no legal basis for the issuance of an execution against the property of a defendant who has satisfied the judgment, even though same was assigned to keep it alive against co-defendants.

McIlvane vs. *T. J. M. Contracting Co.,* 147 Atl. (N. J.) 333.

In the last cited case, in which an insurance company for the benefit of its insured (the contracting company) paid a judgment recovered against the contracting company and one Pelo in an action in tort, and took an assignment of the judgment, the Court said:

> "It clearly appears from the various assignments that the intention of the parties was to keep the judgment alive solely as to Paul Pelo, but whether it did so or not or extinguished the judgment against both, is of no concern here. The judgment against the contracting company having been fully paid and satisfied, there was no legal basis for the issuance of an execution against the property of the contracting company and, therefore, the execution will be vacated and set aside."

Under this authority, obviously, if the alias execution is void as to the two defendants who had been released from the judgment, it is void as to all defendants because the alias execution could not be void in part and valid in part. Therefore, it was properly vacated and set aside as to all of the defendants.

POINT VIII.

Since there is no contribution between joint tort feasors, the one paying a tortuous judgment cannot take an assignment thereof to himself and then enforce it against his co-defendants.

It is contended by our adversary that a judgment recovered in an action in tort transforms or converts the obligation to a contractual one.

Manifestly, this cannot be the law.

Even though the cause of action is merged in a judgment arising *ex delicto* and creates an obligation for the payment of money it surely does not destroy the tortuous element of the original obligation and is enforcible accordingly. Otherwise, a claim for damages against joint tort feasors would be purged of its iniquity when reduced to judgment.

We submit that such a judgment determines in money the extent of the injury the wrongdoers have perpetrated to the plaintiff in the action.

It seems to us fallacious to contend that after judgment against tort feasors they are no longer tort feasors. We would say that the judgment determined that they were tort feasors and that the plaintiff in the action has the right to treat them as such in enforcing the judgment. If this be the law, a joint tort feasor who pays the judgment and takes an assignment thereof to himself for the purpose of enforcing it against his co-tort feasors, cannot prevail for in the judgment inheres the wrong and the joint tort feasors are in *pari delicto* and cannot enforce it against each other.

Therefore, the principle of law declared in *Brown* v. *White,* 29 N. J. Law 514, that:

> "where one joint debtor pays to the judgment creditor a certain sum which he agrees to accept in satisfaction of the judgment, and procures an assignment of the judgment to himself or a third person for his benefit, the payment does not operate as a satisfaction of the judgment as to any of the defendants except the one paying the money, unless it appears that the payment was intended as a satisfaction of the judgment as to all."

does not obtain in the instant case for the reason that the judgment in the *Brown* case, *supra,* arose out of a contractual obligation; and, as to judgment against joint debtors, arising *ex contractu* the one

judgment debtor paying the judgment may have contribution against the others.

In the instant case there can be no contribution because the judgment debtors are joint tort feasors and, therefore, it is immaterial whether the joint tort feasor who paid the judgment in question intended to keep it alive by taking an assignment to himself in order to enforce it against his other joint tort feasors.

We submit that no matter how clear the intent may have been of the defendant, Esy Kanov, in having the judgment in question assigned to himself and then assigned to Louis Feinstein so that it might be enforced against the other tort feasors, he accomplished nothing because by this nefarious scheme he was attempting either to obtain indemnity, contribution or full satisfaction of the judgment which he had already satisfied.

POINT IX.

Appellant has not followed the procedure outlined by him in an act concerning judgments, 3 Compiled Statutes, page 2962.

It is significant to note that counsel for Feinstein in his brief recites the section above referred to at length, and seemingly relies thereon, but closes his quotation without calling the court's attention to the following important provision therein, "that previous to issuing said execution, the amount for which it was issued shall have been fixed by the Chancellor or a judgment of the court within which said execution shall be issued upon application of the party desiring to issue the same made upon two

days' notice to the person and persons against which his intended said execution shall issue". Obviously counsel for Feinstein relies upon this statute to enforce payment of the judgment from German, although in relying upon it he in no way attempted to follow it in seeking satisfaction from German. Instead of following the statute, he, without authority, caused an alias execution to be issued upon the judgment against all of the defendants including Esy Kanov who had paid it and Harry Kanov who had been released from it. Manifestly the alias execution should have been set aside by virtue of the statute upon which Feinstein relies for its enforcement.

POINT X.

The decision of the Court below is based on good sound public policy.

For this point we can do no better than to quote the memorandum of the learned trial Judge below who holds soundly,

> "To hold otherwise would be to completely destroy the effect on the rule against contribution among joint tort-feasors, because otherwise in cases of judgments against such parties, the one who first purchased and took an assignment of the judgment, could sell it to a third party and thus indirectly secure contribution, or perhaps indemnification, because the assignee under such circumstances could not successfully issue execution against his assignor, as to whom the judgment would have been paid, McIllvane vs. T. J. M. Cont. Co., 147 Atl. Rep. (N. J.) 333, but would have to issue it against the other tort-feasors, and, if he so desired, for the full amount of the judgment.

> Such a situation would give complete indemnity to the tort-feasor first purchasing the judgment. This would be as much against public policy as to permit contribution to be obtained directly. The rule against contribution among joint tort-feasors is not based on the ground that contribution in such a case is inequitable. Indeed the application of the rule often works injustice as between the wrong-doers. The rule rests on considerations of public policy, it being against the policy and maxims of the law to adjust equities between wrong-doers, or to permit a person to found an action of his own wrong-doing, 13 C. J. 829, sec. 19."

For all of these reasons we respectfully urge that the appeal herein be dismissed with costs to the appellee, Benny German.

SEPENUK & GOLD,
Attorneys for ~~Appellee~~ Respondent,
Benny German.

EDWARD P. STOUT,
Of Counsel with ~~Appellee~~ Respondent.

New Jersey Court of Errors and Appeals

JACK MANOWITZ,
Plaintiff,

vs.

ESY KANOV, HARRY KANOV, MORRIS BELAGOOR, BENNY GERMAN, and SAMUEL GERBER,
Defendants.

BRIEF FOR LOUIS FEINSTEIN, ASSIGNEE OF JUDGMENT-CREDITOR, APPELLANT.

Statement of Facts.

The plaintiff, Jack Manowitz, recovered a judgment for $24,000. against all of the above named defendants, in a tort action in the Hudson County Circuit Court, on October 21, 1927 (Case, pp. 4-5). By assignment dated February 15, 1928, and duly recorded, the said plaintiff assigned the judgment to Esy Kanov, one of the defendants in the cause, for a consideration of $10,000 (Case, pp. 6-8). By assignment dated October 2, 1929, and duly recorded, for a valuable consideration, Esy Kanov assigned the said judgment to Louis Feinstein, the present appellant (Case, pp. 9-11). He was an entire stranger to the cause and was the purchaser for value of a subsisting judgment of record. An execution was issued and a levy made against the personalty of the defendant, Benny German, who filed a petition with the Hudson County Circuit Court praying for a satisfaction of the judgment.

A rule to show cause issued and testimony was taken before a Supreme Court Commissioner. Thereupon, Judge Henry E. Ackerson, Jr., filed an opinion (Case, pp. 90-96) determining that by reason of the assignment of the judgment from the plaintiff to Esy Kanov, one of the defendants, the judgment was satisfied and should, therefore, be satisfied of record. From the order directing the cancellation of the judgment (Case, 97-98), Louis Feinstein appeals directly to this Court.

Argument.

It is respectfully contended that the court below erred in holding that Feinstein did not succeed to the rights and remedies for collection, of the plaintiff judgment creditor. We urge that the assignment evince an intention that the judgment was to be kept alive, and that under the decisions of this Court and the provisions of the Judgment Act, an assignment of a judgment to a defendant does not constitute a satisfaction of the judgment as against all defendants.

The points will be considered in the following order:

1. Judgments in tort are assignable and appellant succeeded to plaintiff's rights.

2. Only a judgment debtor who pays the judgment can have it satisfied.

3. An assignment of a judgment to a defendant does not operate as a satisfaction against all defendants.

4. Defendant German is a tort feasor. Feinstein is not. German was not entitled to relief of the Court.

5. The judgment created a contractural obligation,—the tort being merged in the judgment.

POINT I.

Judgments in tort are assignable and appellant succeeded to plaintiff's rights.

Section 19 of the Practice Act, 3 Comp. Stat., page 4056, expressly provides: "All judgments * * * recovered in any court of this or any other state * * * shall be assignable at law." Sections 18, 19 and 20 of the Statute concerning judgments, 3 Comp. Stat. 2959 regulates the recording of assignments of judgments.

The case of *Roth* v. *General Casualty and Surety Co.*, 7 A. R. 782, 146 At. 202, decided by this Court, involved a tort case in which judgment was recovered against the wife of the defendant in the action. After the judgment was entered the wife became the holder of the judgment by assignment. This court adopted the rule of law stated by the trial court as follows:

> " 'That such judgments as these (tort) may be assigned by the parties obtaining them the same as any other ordinary judgment can be assigned and that the assignment from the plaintiffs in the accident cases to Mrs. Roth was a legal, effective assignment'."

and added:

> "We agree with this view and think that there passed with such judgment by virtue of such assignment all rights and remedies for collection which the assignor as the holder of such judgments possessed."

Feinstein succeeded to all the rights and remedies for the collection which the plaintiff himself possessed. Surely if the judgment had been as-

signed directly from the plaintiff to Feinstein, no question could have been raised as to his right to issue execution under the judgment, as against the defendant German. The fact that the assignment was not made directly to him, but through one of the defendants should not, in our opinion, divest him of any rights or remedies which he otherwise would have had. His rights are not to be measured by what the defendant Kanov might have done, but he stands in the shoes of the plaintiff and only defenses which could be raised against the plaintiff should be raised against him. Illustrative of this contention is the following situation: The owner of property executes a mortgage, which is not recorded. He conveys the premises to A by warranty deed which is recorded. Thereafter the mortgage is recorded. A conveys to B. Though B has notice of the mortgage, acquires a good title free of the mortgage, because of the rule of law that he acquires whatever rights the original vendee acquired.

Paul v. *Kerswell,* 60 N. J. L. 273;
Sharp v. *Shea,* 32 N. J. Eq. 65;
Ziembrusky vs. *Wasmewski,* 100 N. J. Eq. 57, affirmed 101 N. J. Eq. 311;
Cubberly v. *Homecrafters, Inc.,* 106 N. J. Eq. 470.

POINT II.

Only a judgment debtor who pays the judgment can have it satisfied.

The defendant-appellee, Benny German, filed his petition with the Court below, asking affirmative action on the part of the court. It is to be borne in mind he is a tort feasor. Feinstein is an inno-

cent third person for value of the judgment of record. The defendant German was not entitled to any aid from the court unless he comes clearly within some statute or legal provisions justifying his prayer. The method, manner and circumstances under which a judgment may be satisfied by a court order is found in Section 27 of the Judgment Act, 3 Comp. Stat., page 2961. Briefly the statute provides:—that if the party making the satisfaction does not receive a warrant for the satisfaction of the judgment, he may apply to the court for an order discharging it. *German did not make satisfaction of the judgment. He did not pay the judgment.* The statute reads:

> "Sec. 27. COURT MAY ORDER SATISFACTION ENTERED. That in case any party, having received full satisfaction for any judgment obtained in either of the courts aforesaid, shall refuse or neglect, when requested, to enter satisfaction, as aforesaid, or to sign, seal, and deliver a warrant, duly acknowledged as aforesaid, to enter satisfaction as aforesaid, the party so making satisfaction may, on due notice given, apply to the court to have satisfaction entered as aforesaid, and the said court may order the same to be done, and that the party so having received satisfaction shall pay the cost of the said application, which costs may be recovered by a writ of fieri facias or capias ad satisfaction (Rev. 1877, p. 524)."

In the case of *McIlvane* v. *T. J. M. Contracting Co., et al.,* decided by the Supreme Court, reported in 7 A. R. 825; 147 Atl. 333, the plaintiff, who sustained injuries by reason of an automobile accident, recovered a judgment against the owner and servant. The owner was insured and the insurance company gave its check for the amount of the judgment to the plaintiff and received from him an assignment of the judgment in favor of the Contract-

ing Company; the assignment providing that it was solely for the benefit of the Contracting Company. The assignment was recorded. Subsequently, the Contracting Company assigned the judgment against it and its servant, to Tessie Pelo who thereupon issued an execution against the goods of the Contracting Company. The Court, on the application of the Contracting Company, *set aside the execution because it had paid the judgment.* The Court said:

> "So far as the contracting company is concerned, the judgment against it was fully paid and satisfied. It clearly appears from the various assignments that the intention of the parties was to keep the judgment alive solely as to Paul Pelo, but whether it did so or not, or extinguished the judgment against both, is of no concern here. The judgment against the contracting company having been fully paid and satisfied, there was no legal basis for the issuance of an execution against the property of the contracting company, and, therefore, the execution will be vacated and set aside."

It is to be noted that the Supreme Court said: "That from the various assignments it was the intention of the parties to keep the judgment alive as to Paul Pelo." The Supreme Court said that whether or not such act amounted to an extinguishment of the judgment was of no concern to them at the time.

POINT III.

An assignment of a judgment to a defendant does not operate as a satisfaction against all defendants.

Section 30 of the Judgment Act, 3 Comp. Stat. page 2962, in the very clearest terms indicates that a judgment may be assigned to one defendant. It makes no exception. It includes all judgments. It does not say that judgments in one kind of a case may be assigned to a defendant and that in other cases an assignment shall be considered satisfaction. The suit, in so far as it was pertinent, provides:

> "That in any action brought in * * * any Circuit Court, wherein such judgment shall have been or may hereafter be recovered * * *, against two or more defendants thereto, and the party in whose favor such judgment is rendered * * * shall have received satisfaction thereof from any defendant or defendants less than the whole number of defendants, it shall and may be lawful for the persons so receiving satisfaction * * * to enter an acknowledgment of satisfaction as to the said defendant or defendants, from whom satisfaction thereof shall have been received * * * and such acknowledgment of satisfaction heretofore or hereafter entered shall not operate as a release or discharge of said judgment * * * as to any defendant liable thereon primarily to or equally with the defendant or defendants as to whom such acknowledgment of satisfaction shall have been entered, but may be assigned to such defendant or defendants as have satisfied the same, and he or they shall have full control of said judgment * * *, and may issue execution thereon against such defendant or defendants as to whom there has

> been no satisfaction entered the same as if there had been no payment whatever, and no satisfaction had been entered; provided, that such defendant or defendants shall only recover on such execution the proportionate share of said judgment * * * for which the defendants as to whom such satisfaction has not been entered were originally liable * * *."

It is to be observed that the statute contemplates judgments in tort actions because it recites that the assignment shall not operate as a release or discharge of the defendant as to any defendant liable equally with the defendant as to whom such acknowledgment of satisfaction shall have been entered.

The case of *Brown* v. *White,* 29 N. J. L. 514, decided by this court is analagous to the instant case. It is the only case in the state that the writer could find and is dispositive of the situation at issue. The Court pointed out that an assignment of a judgment to one defendant comes in the same category as a covenant not to sue given to a joint tort feasor. The entire opinion is quoted.

> "ELMER, *J.* The question in this case is, whether the transactions fully detailed in the opinion delivered in the Supreme Court, which it is not necessary to repeat, amounted to a payment and satisfaction of the debt. It has long been an established doctrine of the common law, that if two or more persons be jointly, or jointly and severally bound by one obligation or judgment, and the creditor releases to one of them, all are discharged. This is so, because the law makes a release under seal conclusive evidence that the debt was intended to be satisfied. But it was held by the Supreme Court of this state, in the case of Crane v. Alling, 3 Green 423, in accordance with the prior authorities, that *a covenant not to sue one or two joint debtors, and that if he did sue,*

then the covenant should be a good bar to the action, did not operate to discharge the debt as to the other. This shows that the remedy to recover a debt may be in effect extinguished as to one joint debtor, and yet remain in full force as to the other. Before a debt is held to be satisfied, it must appear that something was done which the parties in fact intended should satisfy it, or which the law considers to be evidence of such intention.

It has always been held that actual payment of a debt by one joint debtor enures for the benefit of all, and that accord and satisfaction by one will enure to the benefit of the other. But this is so when there is a payment or an accord and satisfaction the parties intended should so operate. *No case has been produced, nor are we aware of one, where it has been held that the mere payment of money by a debtor to a creditor operated to discharge a debt, when it appeared that it was not intended to have that effect.* In the case of McIntire v. Miller, 13 Mees & Wels. 728, *it was held that one of several partners owing a debt may buy it up, have it assigned to a friend, and collect it in his name. In the language of Baron Parke 'If the debt be kept alive at the time, it cannot be satisfied by the very act which keeps it alive. To construe that as a payment which is meant to be an assignment is a contradiction in terms.'*

"Upon looking at the agreement and receipts, signed by Mr. Vroom as agent for the plaintiff, it is clear that Mr. Robeson did not intend that the debt should be paid and satisfied by the money he advanced, so far as Mr. White was concerned; but that *he meant that the judgment should be kept alive as against him, and for that purpose it was assigned to a person he designated. The debt was not in fact paid and satisfied, nor was any instrument executed which the law considers conclusive evidence that it was.* What was done was to obtain from the creditor, in consideration of a sum of money advanced an agreement that some of

> the debtors should not be proceeded against nor their property bound. *There was nothing illegal in this, nor was there anything unjust or unfair in regard to Mr. White. He contributed no part of the money. The transaction was certainly no more a satisfaction of the debt than what was done in the case of Crane* v. *Alling.* We are not now called on to determine what the equities between Mr. White and Mr. Robeson are, but simply whether what has been done amounted to legal satisfaction of the judgment. Being clearly of opinion that it did not, I think the order of the Supreme Court was erroneous, and must be reversed."

The case of *Brown* v. *White* was decided by this Court in 1861 and has never been questioned by any later decision, either of the Supreme Court or this Court, having stood unchallenged more than half a century and should not now be overthrown by judicial decision.

> *Graves* v. *State,* 45 N. J. L. 203;
> *Public Service* v. *Matteucci,* 143 Atl. 221, and 6 A. R. 1545.

Though the action did not involve a tort case, Justice Elmer points out that the taking of an assignment of a judgment to one defendant is no more a satisfaction of a debt than the giving of a covenant not to sue is a release. The Justice points out that to construe that as a payment, which is meant to be an assignment, is a contradiction in terms.

POINT IV.

The defendant, German, is a tort feasor. German was not entitled to the relief of the Court.

The matter is not between the defendant joint tort feasors. It involves a situation where the tort feasor, German, applied to the Court for its affirmative action in the cancellation of a judgment held by Feinstein, who was not a party to the suit, but an innocent third person to the original cause of action. Feinstein, under the authorities hereinbefore cited, stands in the place of the plaintiff judgment creditor. He acquired by assignment a judgment open and unpaid of record. Even if Feinstein and German were tort feasors, under established rules, "the law would not undertake to adjust the burthens of misconduct".

> *Newman* vs. *Fowler,* N. J. L. 37, 89;
> *Public Service Railw'y Express Co.* vs. *Matteucci,* 143 Atl. 221, 6 Adv. Rep. 1545.

The reason for the rule is that the law will not lend its aid to him who founds his cause of action upon an immoral or illegal act. It leaves him where it finds him. So, in this case, the law should leave the defendant, German, where it found him. The Court below should not have extended its arm in his behalf as against Feinstein, an innocent third person in no wise connected with the original action.

There was nothing illegal in the assignment of the judgment from the plaintiff to the defendant Kanov, and in the assignment by Kanov to the appellant. In its opinion, the Court below stated that

"to consider the assignment valid, would be to completely destroy the effect of the rule against contribution among joint tort feasors". This does not involve an action for contribution. *The appellant acquired the judgment by assignment and since he succeeds, as we contend, to the rights of the plaintiff judgment creditor, the situation is no more a destruction of the effect of the rule against contribution, than it would be if the plaintiff himself proceeded against the defendant, German. The law permits assignments of judgments, and the law should protect those who acquire the legal rights. Doing that which the law permits can not be against public policy.* The law says that the giving of a release to one of the joint tort feasors is a release against all; but the giving of a covenant not to sue does not constitute a release.

Crane vs. *Alling,* 15 N. J. L. 423.

There is nothing illegal nor violative of public policy in the execution of a covenant not to sue. The giving of an assignment of a judgment comes within the same category.

POINT V.

The judgment created a contractural obligation, the tort being merged in the judgment.

The cause of action was merged in the judgment and is a new cause of action on contract. Although a claim for personal damages arising out of the commission of a tort is not generally assignable, yet where the tort has become merged in a judgment rendered upon it, such judgment may be transferred

by assignment and the assignee may sue on the judgment in his own name. That this is the law is evidenced by cases and judgment Act hereinbefore set forth.

Since Blackstone enunciated the rule found in 3 Blackstone Comm. 160, it has been held that a judgment becomes a contract by operation of law. A judgment is a contract of the highest nature known to the law. ACTIONS UPON JUDGMENTS ARE ACTIONS ON CONTRACTS. The cause or consideration of the judgment is of no possible importance; it is merged in the judgment. When recovered, the judgment stands as a conclusive declaration that the plaintiff therein is entitled to the sum of money recovered. NO MATTER WHAT MAY HAVE BEEN THE ORIGINAL CAUSE OF ACTION, THE JUDGMENT FOREVER SETTLES THE PLAINTIFF'S CLAIM and the defendants assent thereto. This assent may have been reluctant, but in law it is an assent, and the defendant is estopped by the judgment to dissent. FOREVER THEREAFTER, ANY CLAIM ON THE JUDGMENT IS SETTING UP A CAUSE OF ACTION ON CONTRACT.

Judgments estimated in money are specialties or contracts of record. There is no distinction between a judgment for $5000. against several tort feasors and a similar judgment against several contractors. The debt and cause of action are merged in each instance. The judgment debtors in each instance, in every instance of a money judgment, are joint or joint and several debtors. In tort, there is no right of contribution, that is all. The right of contribution is not the test of joint debtorship. Judgments establish the rights of the creditor quite effectually and one who holds a judgment for a sum of money against other parties (no matter upon what cause of action recovered) is a creditor within the meaning of the joint debtors act.

By way of illustration of the merger of the cause of action. The statute of limitations against personal torts is two years; upon contracts, six years. Nevertheless when a cause of action is merged into a judgment in either instance, the statute of limitations is twenty years.

On March 9, 1928, the defendant, German, secured an order releasing the levy made by the Sheriff (Case, pp. 14-15). This order was secured after the assignment of the judgment by the plaintiff to Kanov which was dated February 15, 1928 (Case, pp. 6-8) and without notice to the assignees of the judgment. Notice of the application for the order was given to the attorneys for the plaintiff, who had assigned the judgment, and he was no longer interested. He had received a valuable consideration and had assigned his judgment on February 15, 1928. The Order however, does not direct cancellation of the judgment. IT MERELY RELEASES A LEVY MADE UNDER A PREVIOUS EXECUTION. The order recited that the judgment was fully paid and satisfied. This part of the order was without basis and foundation or fact. There is nothing in the record or the file papers to justify this part of the order. It is most reasonable to infer that if satisfactory evidence had been presented to Judge Cleary that the judgment was in fact paid and satisfied, SUCH EVIDENCE WOULD BE ON FILE. Moreover, Judge Cleary would have ordered the judgment to be cancelled. The judgment was at all times and is now open and undischarged of record. Of course, the plaintiff did not appear on the motion because he had assigned his judgment. However, a judgment purchased, is, so far as the plaintiff in it is concerned, paid; but, if at the time of the payment, assignment is made by the plaintiff, the judgment remains SUBSISTING and VALID until it has answered the claims of the assignee.

In conclusion, we urge that it is fundamental that the holder of a judgment of a Court of record, is seized of a vested property right. Feinstein, who is the assignee of the judgment, is possessed of such a property right, and we believe that to deprive him of this property right, without compensation is contrary to the constitutional provision that property cannot be taken without compensation.

For the reasons urged, it is respectfully contended that the order of the court directing satisfaction of the judgment of record be reversed.

Respectfully submitted,

SAMUEL TARTALSKY,
Of Counsel with Louis Feinstein,
Appellant.