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Notice and Grounds of Appeal
Filed June 22, 1928.
BERGEN COUNTY CIRCUIT COURT

Warner W. Westervelt, Jr., Plaintiff,
vs.
Christine L. Kunz, Defendant.
Amended

NOTICE AND GROUNDS OF APPEAL

To: Warner W. Westervelt, Jr.
Sir:

Please take notice, that the defendant in the above stated cause appeals from the whole of the judgment and every part thereof, entered in the Bergen Circuit Court, to the New Jersey Court of Errors and Appeals, in the last resort in all causes, and that the following are the grounds of appeal:

1. The trial Court committed error in refusing to nonsuit the plaintiff on motion duly made by the defendant.

2. The trial Court committed error in denying the defendant's motion for a nonsuit.

3. The trial Court committed error in holding, deciding and stating that the defendant was not entitled to the benefits of the Statute of Frauds and Perjuries, because the same was not pleaded by the defendant in her answer.

4. The verdict was erroneous and contrary to law, in that the jury allowed the plaintiff interest on the verdict.

5. The verdict was erroneous and contrary to law in that the plaintiff's cause of action was based on a quantum meruit, and the plaintiff was

Summons

SUMMONS

The State of New Jersey to Christine L. Kunz,

(Seal) You are summoned to answer the annexed complaint of

Warner W. Westervelt, Jr.,

in an action at law in the Bergen County Circuit Court. And take notice that unless you file your answer to said complaint with the Clerk of the said Bergen County Circuit Court of Hackensack, N. J., within twenty days after the service upon you of this writ and the annexed complaint, the plaintiff may proceed in the suit, and judgment may be entered against you. (And see Notice endorsed hereon.)

Witness, Edwin C. Caffrey, Esquire, Judge of the said Court at Hackensack, N. J., this twentieth day of September, nineteen hundred and twenty-seven.

Warner W. Westervelt, Jr.,
Attorney.

James W. Mercer,
Clerk.

Complaint

BERGEN COUNTY CIRCUIT COURT

Warner W. Westervelt, Jr., Plaintiff, vs. Christine L. Kunz, Defendant.	Action at Law

COMPLAINT

Plaintiff, residing at Ridgewood, Bergen County, New Jersey, says that he sues for the value of professional services rendered to the defendant by the plaintiff between the twenty-first day of June and the second day of September, 1927. Said services were rendered by the plaintiff at the request of the defendant in connection with the acquiring of certain property belonging to the defendant, and situate in the Borough of Fort Lee, County of Bergen and State of New Jersey, by the Port of New York Authority (a body corporate and politic established by compact between the States of New York and New Jersey, ratified by the Congress of the United States), which resulted in the conveyance by the defendant to The Port of New York Authority, as aforesaid, of said premises and the recovery by the defendant of compensation for damages done to said premises by said The Port of New York Authority. The reasonable value of said services is the sum of Four Thousand Dollars ($4,000.00).

Plaintiff demands as damages the sum of Four Thousand dollars ($4,000.00) with interest thereon from the Second day of September, 1927.

A copy of said bill is attached hereto.

Warner W. Westervelt, Jr.
Attorney for Plaintiff.

Bill of Particulars

The following is a copy of the bill mentioned in the within complaint.

Professional services in the matter of the acquiring of real estate of the defendant by The Port of New York Authority, conferences, correspondence, preparation of contracts, approval of proposed options, preparation of notices to quit premises, preparation of deed and the closing of title to the said premises.

Judgment will be claimed for the sum of Four Thousand ($4,000.00) dollars with interest thereon from the Second day of September, A. D. 1927.

Warner W. Westervelt, Jr.
Plaintiff-Attorney.

Notice to the within named defendant:

In case the within Summons and Complaint are served upon you personally, then take notice that if you intend to make a defense to this action, you must file an affidavit of Merits within ten days from the date of service hereof upon you, and must file your answer within twenty days from the date of such service, and in default of the filing of such affidavit and answer, judgment will be entered against you. Lawful Service upon a Corporation, is deemed personal service for the purpose of this Notice (P. L. 1912, p. 394, Rule 56).

Warner W. Westervelt, Jr.
Plaintiff Attorney.

Filed October 1, 1927.
BERGEN COUNTY CIRCUIT COURT

Warner W. Westervelt, Jr.
Plaintiff,
vs.
Christine L. Kunz,
Defendant.
} Action at Law

AFFIDAVIT OF MERITS

State of New Jersey,
County of Bergen,
} ss:

Christine L. Kunz of full age, being duly sworn according to law on her oath says that she is the defendant in the above entitled action and that she has a just and true defense—to the same on the merits of the case.

Christine L. Kunz.

Affirmed and subscribed before me
this 1st day of October, 1927.

Madeline Bachman,
Notary Public of New Jersey.

Answer

Filed October 8, 1927.
BERGEN COUNTY CIRCUIT COURT

Warner W. Westervelt, Jr.
Plaintiff,
vs.
Christine L. Kunz,
Defendant.
Action at Law

ANSWER

The following is the answer of Christine L. Kunz to the complaint in the above cause:

1. This defendant denies all the matters set forth in said complaint.

Notice

Notice is hereby given that the defendant will object at the trial of the cause to the complaint in the above cause on the ground that the same does not set forth a cause of action.

Ward & McGinnis,
Attorneys of Defendant.

Judgment

JUDGMENT

The above cause having been tried before Judge Edwin C. Caffrey and a Jury on May 16, 1928 in the presence of the respective attorneys and the jury having returned a verdict in favor of the plaintiff and against the defendant for the sum of Three Thousand One Hundred and twenty-nine dollars ($3,129.00).

It is ordered that judgment final be entered for the sum of Three thousand one hundred twenty-nine dollars ($3,129.00) besides costs of suit to be taxed May 21, 1928. Costs seventy-six dollars and forty-two cents ($76.42).

Judgment was entered May 21, 1928, in favor of the plaintiff Warner W. Westervelt and against the defendant Christine L. Kunz for the sum of Three thousand one hundred and twenty-nine dollars damages and seventy-six dollars and forty-two cents ($76.42) costs in Book J of Circuit Court Judgments, Page 431.

Certificate of Clerk

United States of America,
State of New Jersey, } ss:
County of Bergen,

I, James W. Mercer, Clerk of the County of Bergen aforesaid, and also Clerk of the Circuit Court and Court of Common Pleas holden therein, the same being Courts of Record with a seal,

Do Hereby Certify, that the following is a true copy of the verdict handed down by a jury in the Bergen Circuit Court before Judge Edwin C. Caffrey on May 17, 1928, in the case of Warner W. Westervelt, Jr., vs. Christine L. Kunz:

"Jury hands in a verdict in favor of Mr. Westervelt, plaintiff, $3,000 with interest of 6%.

Marguerite Gilbert,
Forelady, 5-17-28."

In Testimony Whereof, I have hereunto set my hand and affixed the Seal of said Courts and County at Hackensack, this eighth day of June, 1928.

(Seal)

James W. Mercer,
County Clerk,

Deputy County Clerk.

Order for Deposit

BERGEN COUNTY CIRCUIT COURT

Warner W. Westervelt, Jr.,
Plaintiff,
vs.
Christine L. Kunz,
Defendant.
} Action at Law

ORDER

Upon this matter being opened to the Court by Louis C. Friedman of Ward & McGinnis, attorneys of defendant, and the jury having brought in a verdict in favor of the plaintiff and against the defendant in the sum of Three Thousand Dollars ($3,000.00) with interest at 6%, and the defendant having filed notice and grounds of appeal, and desiring to deposit the aforesaid moneys with the Clerk of the Court to secure the plaintiff's judgment if the Appellate Court shall affirm the same, instead of giving bond to the plaintiff with two good and sufficient sureties double the amount of the judgment, therefore,

It is, on this 18th day of June, 1928, ordered, that the defendant-appellant, Christine L. Kunz may deposit with the Clerk of this Court, the sum of Three Thousand, Two Hundred Five Dollars and Forty-Two Cents ($3,205.42) covering the verdict and costs, as security for the plaintiff in lieu of two good and sufficient sureties, and the condition of the aforesaid deposit with the Clerk of the Court shall be that the defendant-appellant shall prosecute her appeal with due diligence and without delay, and in case the Court of Errors and Ap-

peals shall affirm the aforesaid judgment, then the Clerk of the Court shall pay over the aforesaid moneys to the plaintiff, Warner W. Westervelt, Jr., but if the Court of Errors & Appeals shall reverse the aforesaid judgment, then the Clerk of this Court shall pay over the aforesaid moneys to defendant-appellant, Christine L. Kunz.

Edwin C. Caffrey,
Judge, Bergen Circuit Court.

State of New Jersey, }
County of Bergen, } ss:

I, James W. Mercer, Clerk of the County of Bergen and also Clerk of the Circuit Court in and for said County, do hereby certify that the foregoing is a true copy of the original Order as the same remains on file in my office at Hackensack.

(Seal) In Testimony Whereof, I have hereunto set my hand and affixed the seal of said County and Court this 18th day of June, 1928.

James W. Mercer, Clerk.
W. S. Doremus, Dpty.

United States of America, }
State of New Jersey, } ss:
County of Bergen, }

I, James W. Mercer, Clerk of the County of Bergen aforesaid, and also Clerk of the Circuit Court and Court of Common Pleas holden therein, the same being Courts of Record with a seal,

Do Hereby Certify, that the foregoing is a true copy of the original papers filed in the case of Warner W. Westervelt, Jr., vs. Christine L. Kunz as the same remain in my office at Hackensack.

(Seal) In Testimony Whereof, I have hereunto set my hand and affixed the Seal of said Courts and County at Hackensack, this 31st day of May, 1928.

James W. Mercer,
County Clerk.

Deputy County Clerk.

BERGEN COUNTY CIRCUIT COURT

Warner W. Westervelt, Jr. Plaintiff, vs. Christine L. Kunz, Defendant.	Action at Law

Hackensack, New Jersey, May 16, 1928.

Before:

Hon. Edwin C. Caffrey,
Judge, and a Jury.

Appearances:

For the Plaintiff,
Warner W. Westervelt, Jr., Esq.;
John B. Zabriskie, Esq., of Counsel.

For the Defendant,
Ward & McGinnis, Esqs.; and
Louis C. Friedman, Esq.

A Jury was empanelled, accepted and sworn.

Mr. Zabriskie opens the case to the Jury on behalf of the Plaintiff.

Mr. Friedman opens the case to the Jury on behalf of the Defendant.

Mr. Zabriskie—I will call Mr. Westervelt.

WARNER W. WESTERVELT, JR., the Plaintiff, sworn as a witness on his own behalf, testified as follows:

Direct Examination by Mr. Zabriskie:

Q. Mr. Westervelt, where do you live? A. Ridgewood, Bergen County.

Q. And where is your place of business? A. 78 Main Street, Hackensack.

Q. And how long have you been in business in Hackensack as a lawyer? A. Since 1907.

Q. And how long have you been practicing law? A. I was admitted as an attorney in 1907, and as a counsellor in 1912.

Q. And with what firm were you associated before you became—before you practiced alone? A. Judge Demarest and Abram De Baun, as Demarest & De Baun.

Q. And then the firm became what? A. Demarest, De Baun & Westervelt after that.

Q. And what has been the nature of your practice, Mr. Westervelt? A. Very largely real estate law, and the Orphans' Court and Chancery practice.

Q. And have you had experience in connection with the making of sales of real estate? A. Yes, very much. A large part of our practice is connected with building and loan work and making of loans and closing of loans and closing of titles.

Q. And during the course of what length of time have you been doing that kind of work, Mr. Westervelt? A. Well, ever since 1907.

Q. Yes. Now, do you know Miss Kunz, the defendant in this case? A. I do.

Q. And you had known her for how long before this particular transaction? A. I should say probably for five years; maybe more.

Q. And in what capacity had you known her? A. As her attorney, I had had several other matters before this.

Q. Now, coming down to the services in this case, when did Miss Kunz first consult you in con-

nection with this particular matter? A. On the 21st day of June, 1927.

Q. Yes. Now then, will you just outline to the Court and to the Jury what services you rendered, starting with in June, 1927; just outline the transaction? A. Well, on the 21st day of June, 1907, Miss Kunz came to my office.

The Court—1927?

The Witness—1927. Miss Kunz came to my office, and she brought with her a copy of a letter that she had received from the Port Authority of New York. She told me that there were some men on her property then, they were cutting down trees, and blasting holes in the rocks, and she wanted it stopped. I asked Miss Kunz that day whether the Port Authority of New York had ever made any advances to her to acquire any part of her property. She said they had not.

Q. Now, just for a minute, Mr. Westervelt,— A. Yes.

Q. I show you a letter dated June the 6th, 1927, which might be marked for identification.

(Letter marked Exhibit P-1 for Identification.)

Q. And signed by the Port of New York Authority, by somebody, Chief Executive Officer, and I ask you have you seen that letter before? A. (Referring) Yes.

Q. And where did you get that letter, Mr. Westervelt? A. Miss Kunz brought me that letter.

Q. And on what occasion? A. That was at the time that she made this call at my office on the

21st of June, and wanted me to stop the trespassing on her property.

Q. Yes.

Mr. Zabriskie—I offer that in evidence, as showing the—

Mr. Friedman—There is no objection for that purpose.

(Letter heretofore marked Exhibit P-1 for Identification marked Exhibit P-1 in evidence.)

Q. Now then, speaking of that June 21st, your testimony was with reference to what date, Mr. Westervelt? A. June the 21st, 1927.

Q. Yes. Now then, on June 21st, 1927, you say you wrote a letter for her? A. I immediately wrote and dictated a letter, while she was sitting at my desk in my office, I wrote a letter to the Public Service corporation, and I also wrote a letter to the Port of New York Authority, requesting them to desist from trespassing until they had taken the matter up with her.

Mr. Zabriskie—I will ask that it be marked for identification. Of course, perhaps, it is unnecessary to go through that routine, because it is for the purpose of showing there was an employment here. They are carbon copies of letters which he wrote in pursuance of his employment. I will ask that they be marked for identification, then.

(Letter marked Exhibit P-2 for identification.)

Mr. Zabriskie—And then, also, I will—

Mr. Friedman—We won't object.

Mr. Zabriskie—Then I won't take the time of the Court. I offer them in evidence, then; there is no objection, apparently.

(Letter heretofore marked Exhibit P-2 for identification marked Exhibit P-2 in evidence.)

The Court—Are there two of them?

Mr. Zabriskie—There are two, yes, your Honor.

(Letter marked Exhibit P-3 in evidence.)

Q. Now, is this one of the letters, is P-2 one of the letters that you wrote on that occasion? A. Yes. That is the letter that I wrote to the Port of New York Authority.

Q. And you say you dictated that in the presence of Miss Kunz? A. In the presence of Miss Kunz.

Q. I think you might read that to the jury, if there is no objection.

The Court—(To counsel) I think you had better read it to the Jury.

Mr. Zabriskie—(Reading Exhibit P-2 to the Jury.)

Q. Now, that was written, dictated in the presence of Miss Kunz? A. In the presence of Miss Kunz, and read to her and approved by her before it went out.

Mr. Zabriskie—(Reading Exhibit P-3 to the Jury.)

Q. And you say that was written in her presence? A. Dictated at the same time in her presence, read to her and approved by her before it went out.

Q. Well now, have you outlined all of the conversation that you had with her on that occasion? A. Well, not entirely, because at that same occasion I explained to Miss Kunz that the Port Authority had the right to take her property by condemnation if they so desired.

Mr. Friedman—I object to that, if the Court please.

The Court—Why?

Mr. Friedman—Anything about condemnation proceedings in the case.

The Court—That relates to a conversation.

Mr. Friedman—Oh, I see. I beg the Court's pardon.

A. (Continuing) And that, consequently, if they desired to take the property, she could not prevent their taking it, and it would then turn merely upon a question of what they were willing to pay and what she was willing to take, or what a commission would award in the case of condemnation proceedings. I explained that quite fully to her that day while she was there in the office. I think that was about all that transpired at that particular day; and I told her that I would advise her as to the result of these two letters.

Q. Yes. And did you subsequently receive a reply from the Public Service? A. I did.

Mr. Zabriskie—And if there is no objection, I will offer that in evidence. It is just to show—

Mr. Friedman—No objection.

Q. And did you show that letter to Miss Kunz? A. I did.

Q. Or communicate with her concerning it? A. I did.

Mr. Friedman—No objection.

(Letter marked Exhibit P-4 in evidence.)

Mr. Zabriskie—(Reading Exhibit P-4 to the Jury.)

Q. And now I show you another letter, Mr. Westervelt, and ask you if you received that? A. (Referring) I received that letter, yes, from the Port of New York Authority.

Q. That being a letter dated June 24th, 1927, from the Port Authority.

Mr. Zabriskie—I will offer that in evidence.

Mr. Friedman—No objection.

(Letter marked Exhibit P-5 in evidence.)

Mr. Zabriskie—(Reading Exhibit P-5 to the Jury.)

Q. It is signed by some man whose name I cannot read. A. John R. Ramsay.

Q. John R. Ramsay? A. Ramsay.

Q. And did you subsequently receive another letter from Mr. Sproul, from the Public Service, Mr. Westervelt? A. I did.

Q. And I show you a letter dated— A. June 29th.

Q. —June 29th, 1927, signed by Thomas Sproul. A. Yes. I received that letter.

Q. And did you show it to Miss Kunz? A. I did. I communicated that to her. I showed it to her in my office.

Mr. Friedman—What is the date on that?

Mr. Zabriskie—June the 29th.

Q. And she was in your office? A. She was at my office almost every day, at first.

Mr. Zabriskie—I offer that in evidence.

Mr. Friedman—No objection.

(Letter marked Exhibit P-6 in evidence.)

Mr. Zabriskie—(Reading Exhibit P-6 to the Jury.)

Q. Now, I show you another letter, Mr. Westervelt under date of June 30th, 1927, purporting to come from the Port Authority, and I will ask you if you received that letter? A. I did.

Q. And did you show it to Miss Kunz and take up with her the contents of it? A. Yes, I did. I had quite a discussion over that letter.

Q. Where? A. In my office.

Q. Yes. These talks that you had with her, were they always at your office here in Main Street? A. No. Some of them were over the telephone.

Q. Oh, I see. A. She called up quite frequently over the telephone to ascertain how the thing was going along, but that particular letter was discussed very fully in my office with Miss Kunz.

Q. Yes. And, as far as you know, at that time she was living at what place? A. She was living on this property.

Q. In Fort Lee? A. In Fort Lee; yes.

Q. And that is right where the bridge comes across? A. That is right.

Mr. Zabriskie—If there is no objection, I will offer this.

Mr. Friedman—From the Port Authority?

Mr. Zabriskie—From the Port Authority, yes.

The Court—Is that the one you had before?

Mr. Zabriskie—That is the one I was just talking about. I haven't offered it yet.

Mr. Friedman—No objection.

(Letter marked Exhibit P-7 in evidence.)

Mr. Zabriskie—(Reading Exhibit P-7 to the Jury.)

Mr. Friedman—Now, if the Court please, the contents of that letter as to the fact that it is mentioned that Miss Kunz is Mr. Westervelt's client, I move that that be stricken out. I did not object to the letter to be admitted in evidence for the purpose only that it was received from the Port of New York Authority by Mr. Westervelt in reply to his letter.

The Court—I heard no such limitation. The letter was admitted.

Mr. Friedman—I said for that purpose.

The Court—I will let it remain.

Q. And, as a matter of fact, did you—

Mr. Friedman—Exception.

Q. —take up the contents of this letter with Miss Kunz? A. I certainly did.

Q. Did you show her the letter? A. I certainly read it to her.

Q. And then the reference in that letter to the map, HRB—S-48; I show you a map and ask you whether or not that is what was referred to in that letter? A. That is the one that is referred to in that letter. And that was brought to me by Mr. Lanterman and Mr. Dudley of the Port Authority just prior to that—at the conference between us referred to in that letter.

Q. Now, can you just tell what the property consisted of that Miss Kunz had there that the Port Authority was negotiating about? A. Well, Miss Kunz owned a piece of property that had about 134 feet frontage on Hudson Terrace, I think that is the name of the street.

Q. Yes. That is the Hudson Terrace that is indicated? A. That is shown on the blueprint.

Mr. Zabriskie—I will offer the blueprint at this time?

Mr. Friedman—No objection to that.

(Blueprint marked Exhibit P-8 in evidence.)

Q. You have been over on the property a great many times, have you, Mr. Westervelt? A. I have been over on the property on several occasions.

Q. And you are familiar with the whole layout? A. I am.

Q. Now, you say she had 134 feet of front? A. About 134 feet, if I remember the figures correctly.

Q. If there is no objection, you might refer to the map. You have seen that map many times before? A. I have. 134 and 84/100ths feet, as shown on this map as her frontage, and I believe that is correct. I have checked that with her deeds, and it was composed of two lots as shown on the filed map, and those lots extended from Hudson Terrace clear through to the cliffs on the Hudson River, overlooking the Hudson River. They run to a depth, if I remember correctly, of about 900 feet, and on this property was erected the dwelling house in which Miss Kunz lived. It is a frame dwelling of, I think, five rooms. I am not quite sure of the number of rooms. I never was upstairs in the house. It is a frame building, I should say from its appearance, probably twenty or thirty years old, and I believe with no improvements in it. The—there are no out-buildings of any moment upon the property. It is a very rough piece of the Palisades, mostly rocks, partly covered by trees.

Q. Now, the area of the whole piece; do you know that? A. The area of the entire parcel, as shown on the—by the survey made by the Port of New York Authority, which I have checked with the original survey, also in the possession of Miss Kunz, that was made some years ago, is 2 and 92/100ths acres, I believe.

Q. A little less than three acres? A. A trifle less than three acres.

Q. Now then, did you have a talk with the representative of the Port Authority? A. Several of them.

Q. Yes. And in connection with this $17,500.00 proposition? A. At my office, Mr. Lanterman, the real estate—in charge of the real estate department of the Port Authority, and Mr. Dudley, the attorney, who had charge of the acquisition of real estate for the Port Authority in this enterprise, had a conference with me at which they brought me that blueprint.

Q. That is referring now to this Exhibit P-8? A. P-8.

Mr. Friedman—May I get the date of that?

A. (Continuing) And at that time, the piece—the portion of the property belonging to Miss Kunz which the Port Authority wished to acquire and which they mention in that letter that has just been read to you is outlined in the heavy white lines on that map. The approach to the bridge is indicated by the diagonal lines, including the portion in the heavy white lines that comes across just the frontage of her two lots, and that was all that they were attempting to acquire at that par-

ticular time in these proceedings, and for which they offered $17,500.00.

Q. And you say "they"; you mean Mr. Lanterman— A. Lanterman, and Mr. Dudley, for the Port Authority.

Mr. Friedman—What is the date of that?

The Witness—That is mentioned in that letter that has just been read.

Q. By a reference to this letter P-7, can you tell about the date of that conference, Mr. Westervelt? A. Yes. It was the day, I believe, prior to the date of this letter. This letter is dated June the 30th, and I asked Mr. Lanterman and Mr. Dudley at that conference to put in writing any offer that they had to make Miss Kunz.

Q. Yes. A. And as soon as they returned to the office, they got that letter up, and I received it just a day or two later.

Q. Yes. And that piece that they wanted there took in about how much property? A. Well, it is shown on that blueprint.

Q. Yes. A. I think it was 1 and 5/100ths acres; something about that. It is shown on there; you will see the area is marked on the blueprint.

Q. Yes. And what part of the road frontage or street frontage did that take? A. It took it all.

Q. It took all of it. And it did not take the building? A. No. It did not go near the building.

Q. What was the value, roughly, of the buildings on that property? Did they enter into the consideration at all? A. Why, I should say that

if I were asked to make a loan on that, I would not appraise that house at more than $2,500.00, if that.

Q. Yes. Now, I show you a letter, or a copy of a letter, of July the 12th, 1927, addressed to E. Tracey Lanterman. Was the original of that written by you? A. It was dictated by me; yes, sir.

Q. And in the meantime, had you seen Miss Kunz? Had she been consulting you? A. Yes.

Q. Yes. A. She had consulted me in regard to the previous letter from the Port Authority, and that was the occasion for my writing this one.

Q. Yes. And this last letter from the Port Authority, you referred to, you say you went over that? A. Yes, sir; and with her; I certainly did.

Q. Now, July the 12th, 1927, "Mr. E. Tracey Lanterman, 75 West Street." Is that the same Mr. Lanterman? A. That is the same Mr. Lanterman.

Q. That you mentioned.

(Letter marked Exhibit P-9 in evidence.)

Mr. Zabriskie—(Reading Exhibit P-9 to the Jury.)

Q. Who signed this letter, Mr. — A. Miss Kunz signed that letter herself.

Q. Have you the original letter? I think you served a notice to produce. A. That is in the hands of the Port Authority, is it not?

Q. Oh, that is in the hands of the Port Authority; that is true. A. And that original letter is here.

Q. You have the original letter here? A. It is here. Mr. Dudley has it in his possession.

Mr. Zabriskie—Suppose we have that.

(Letter produced.)

Mr. Zabriskie—Then I will withdraw the offer of the copy, because I will use the original. No objection, I guess, to that?

Mr. Friedman—No objection.

(Original letter marked Exhibit P-9 in evidence, and then withdrawn as wrong letter produced.)

Mr. Zabriskie—So as not to waste any time, I will offer in evidence other letters.

Q. I show you a letter dated August 19, 1927, addressed to J. E. Ramsay and signed Christine L. Kunz, and I ask you if that letter was signed by Miss Kunz? Was that in your presence? A. No. It was not.

Q. That was not in your presence? A. No.

Q. But do you recognize the signature? A. That is Miss Kunz's signature.

Mr. Zabriskie—And there is no objection? Is it your signature, Miss Kunz? (Handing paper).

Miss Kunz—Yes, it is.

Mr. Zabriskie—All right. Now then, I will offer it in evidence. This will be P-9 after all.

(Letter marked Exhibit P-9 in evidence.)

Mr. Zabriskie—(Reading Exhibit P-9 to the Jury.)

Q. You say you wrote the original of this letter, and it was signed by Miss Kunz, is that right, Mr. Westervelt? A. No, I did not write that letter. That letter was dictated by Mr. Ellis, William E. Ellis.

Q. At your office? A. In my office. But it was dictated by Mr. Ellis while I was on my vacation, and then this letter of August the 17th, 1927, that letter was dictated by Mr. Leslie in my office, also during my absence.

Q. While you were away? A. Yes, sir.

Q. I see.

Mr. Zabriskie—And I will offer that. I showed it to you before.

Mr. Friedman—No objection.

(Letter marked Exhibit P-10 in evidence.)

Q. "J. E. Ramsay, Chief Executive Officer." You say this was dictated by Mr. Leslie. Who was Mr. Leslie? A. Mr. Leslie at that time was and still is in my office, a partner of mine.

Q. Associated with you? A. Yes.

Q. And the other letter, P-9, bearing Mr. — A. Ellis's dictation.

Q. Yes. A. That was done during the absence of both Mr. Leslie and myself on our vacation.

Q. But working for whom? A. For us.

Mr. Zabriskie—(Reading Exhibit P-10 to the Jury.)

Mr. Friedman—What exhibit is that?
Mr. Zabriskie—That is Exhibit P-10.

Q. Now, where is the other one that you had? A. (Letter produced.)

Mr. Zabriskie—And I offer now the letter of July 12th, 1927. That is the one you have already seen.
Mr. Friedman—No objection.

(Letter marked Exhibit P-11 in evidence.)

Q. Now, this P-11, Mr. Westervelt, you say that was written or dictated by whom? A. That was dictated by me.

Q. And under what circumstances? In your office? A. Yes. That was in my office.

Q. Yes? A. And it was dictated in order to give the Port Authority the right to go on with their work pending the negotiations.

Q. And did Miss Kunz read it over before she signed it? A. It was dictated in her presence, read to her, and she signed it in my office, and it went from my office.

Mr. Zabriskie—Now, this is July 12th, 1927.

(Reading Exhibit P-11 to the Jury.)

Q. And then I show you a letter of July 13, 1927; is that a letter received by you in connection with this matter? A. It is.

Q. And was it taken up with Miss Kunz? A. It was taken up with Miss Kunz, and it was the result of this letter that—well, this letter came right after that—

Q. Yes. A. —agreement to allow them to go on with the werk.

Mr. Zabriskie—I will offer it in evidence. I won't take the time to read this correspondence, all of it, because it takes up, perhaps, too much time, and the Jury will see it anyway.

(Letter marked Exhibit P-12 in evidence.)

Q. I show you a letter of July 15th addressed to Miss Christine L. Kunz and I will ask you where you received that, Mr. Westervelt? A. Miss Kunz brought that letter to me.

Q. And when did she bring that, as nearly as you can tell? A. Well, I cannot tell you the exact date because I have no way of checking that up, but it was very shortly after she received it, because that was the letter that determined or raised the question of the value of the entire piece of property.

Q. Yes.

Mr. Zabriskie—I offer that.
Mr. Friedman—No objection.

(Letter marked Exhibit P-13 in evidence.)

Q. Now, I show you a letter that bears no date, just "Monday", and signed "C. L. Kunz". I take it you have seen that letter before? A. Yes.

Q. And in whose handwriting is that? A. That is Miss Kunz.

Q. And did you receive it? A. I did.

Q. In what way? By mail, or— A. Yes, that came by mail.

Q. Yes. A. And enclosed that other letter.

Q. Yes.

Mr. Zabriskie—And I will offer that in evidence.

Mr. Friedman—That is from whom?

Mr. Zabriskie—From Miss Kunz.

Mr. Friedman—No objection.

Mr. Zabriskie—(Reading) "Monday. Dear Mr. Westervelt: As I did not get speech with you today, I hasten to tell you that on Friday night three men, Mr. Johnson, Mayor of Englewood, Mr. Bogert, tax assessor of Englewood, and Mr. Howells, real estate men, and also in the Fort Lee bank, came to me and said they were engaged by the 'P. of N. Y.' authority to examine my premises and set a value on it." And so forth and so forth. "Which they did. I have made arrangements to have it valued, also, and when that is done will send their statement on to you. Today I received the enclosed." And the "enclosed" was a—

The Witness—That is the prior exhibit.

Mr. Zabriskie—The prior exhibit?

The Witness—Yes.

Mr. Zabriskie—(Reading) "Will you acknowledge it, as—and say you will have all speed made to comply with their request," and so forth. "Or shall I do so? I do not want to put any statement down in ink. The fence on the south lot line, 955 feet, is almost completed, 11 feet high, plus three

strands of heavy hog wire on top." I think it is "hog". Some "Brothers is getting things ready. Foley Brothers getting ready so this bridge work begins. Lots of my stuff—have bought a lot of my stuff and given me a good price. The big men of the bridge are here daily. Yours very truly, C. L. Kunz."

I offer that letter. It has not been marked yet.

(Letter marked Exhibit P-14 in evidence.)

Q. Can you tell about when that was received, Mr. Westervelt? A. Somewhere about the middle of July. It was right after the signing of the consent to put up those—to go ahead with the erection of the wires—

Q. Yes. A. —across this property.

Q. And did you write a letter to the Port Authority as requested by her in that letter? A. I did.

Q. And is this a copy of it, letter dated July 20th, 1927? A. Yes. I dictated that letter.

Mr. Zabriskie—I will offer that in evidence.

Mr. Friedman—No objection.

(Market Exhibit P-15 in evidence.)

Mr. Zabriskie—(Reading Exhibit P-15 to the Jury.)

Q. I show you a letter dated July the 20th addressed to Miss Kunz and signed by you, and ask

you where you got that from? A. Miss Kunz returned this letter to me when she came in and consulted me about the matter after the letter was received by her.

Q. Yes. You sent it to her, and then she came in and gave it back to you with this paper alone or with other papers? A. The other map, I think, came in about the same time.

Q. Yes. A. I do not remember just exactly what was brought in and how, but according to that time.

(Letter marked Exhibit P-16 in evidence.)

Mr. Zabriskie—(Reading Exhibit P-16 to the Jury.)

Q. That is just a copy of the same thing. Now, I show you a blueprint with some legal cap sheets attached, and ask you what that is, Mr. Westervelt? A. Well, that is a survey which was furnished by the—or made by the Port of New York Authority showing the entire property of Miss Kunz, and attached to it is a proposed agreement which Mr. Lanterman presented to me in order to enable the Port Authority to go on with the work pending the negotiations for the acquisition of the entire holdings of Miss Kunz. This proposed agreement is executed by the Port of New York Authority—

Mr. Friedman—Just one moment.

A. (Continuing)—and was left in my office.

Mr. Friedman—I object, if the Court

please. That is not in evidence yet.

Mr. Zabriskie—No.

The Court—No.

Q. Is that something that you considered in connection with your work for Miss Kunz? A. Yes.

Q. Yes.

Mr. Zabriskie—And I will offer it in evidence now in view of the testimony that he has given up to this point.

Q. There is nothing there excepting the agreement and the blueprint, is there?

Mr. Friedman — Agreement between whom?

Q. Just explain that. A. It was an offer that was made by the Port Authority on the request by Miss Kunz, that whatever offers they had were to be reduced to writing.

Q. Yes. A. And this offer was made for the purpose of inquiry, they to proceed with the work pending the acquiring of the property, either by contract or by condemnation—or by the starting of condemnation proceedings within thirty days of its date.

Mr. Friedman—Through your instrumentality?

The Witness—It was brought to my office, left at my office for Miss Kunz.

Mr. Friedman—Through your instrumentality?

The Witness—Yes.

Mr. Friedman—No objection.

(Paper marked Exhibit P-17 in evidence.)

Q. Is this the whole agreement? A. That is the agreement; this is a carbon copy on which some notations have been made in conference.

Mr. Friedman—(Referring to paper.)

Mr. Zabriskie—That belongs to these (indicating papers). It is not offered in evidence.

Mr. Friedman—It was torn off from the map.

The Witness—Let it go in.

Mr. Zabriskie—Mr. Westervelt says he has no objection.

The Witness—It is not part of the executed agreement.

(Paper again attached to Exhibit P-17.)

Q. While that is being looked at, this letter of July 22nd, 1927, that is also a letter that was written in the course of your employment by Miss Kunz, is it not? A. Yes.

Mr. Friedman—There is no objection to this.

A. (Continuing) That letter was written at the same time the other one was, also.

Mr. Zabriskie—And I will offer that in evidence.

(Letter marked Exhibit P-18 in evidence.)

Q. You have some little odds and ends of correspondence besides those offered in evidence, Mr. Westervelt; isn't that so? A. Oh, yes, I had a great many letters.

Q. Now then, did you ever have any talk with Miss Kunz on the question of compensation, Mr. Westervelt? A. Yes.

Q. What was the result of all these negotiations that you had? A. Well, the result was the execution of a contract on the 29th day of August.

Mr. Friedman—The date, please?

The Witness—The 29th of August, in which Miss Kunz agreed to sell her entire property to the Port of New York Authority for $84,000.00 in cash. That contract was actually signed in the presence of Mr. Ellis, acting for me, while I was away on my vacation, and was brought to me just as soon as executed, by Mr. Ellis on the 29th; I had just got back to my office on that day. On the 2nd day of September, we closed the title for the property. I closed that in the office of the Port of New York Authority on West street in New York in the presence of Mr. Lanterman, Mr. Dudley and Mr. Horowitz of the Port Authority, and Miss Kunz and myself, and received the balance of $74,000.00 in cash or in a check of the Port of New York Authority, which I delivered to Miss Kunz that day.

Q. So the deal was consummated? A. It was actually consummated, and I closed the title.

Q. I overlooked this letter. Here is a letter of August the 9th, 1927, addressed to you, and I ask you if that letter was received by you in the course of these negotiations? A. That letter was brought to my office after I was away on my vacation. Mr. Leslie received that letter.

Q. But it came to your office? A. It came to my office after I had left. Mr. Leslie received it.

Mr. Zabriskie—I will offer that.

(Letter marked Exhibit P-19 in evidence.)

Mr. Zabriskie—(Reading Exhibit P-19 to the Jury.)

Q. I show you two letters, Mr. Westervelt, signed by yourself, addressed to Miss Kunz, and ask you, were those mailed to Miss Kunz in the first instance? A. That one (indicating) was, and was brought back by Miss Kunz to my office.

Mr. Zabriskie—I offer that in evidence, for that purpose.

Mr. Friedman—No objection.

(Letter marked Exhibit P-20 in evidence.)

Mr. Zabriskie—Another letter, for the same purpose.

The Witness—That one was the same way. I mailed that to her, and she came in and saw me about the matter.

Q. And left it with you again? A. Brought the letter back with her.

Mr. Zabriskie—I offer that.

Mr. Friedman—May I see that, first, please? (Referring to paper.)

(Letter marked Exhibit P-21 in evidence.)

Q. Another letter of August 15, 1927, addressed to Miss Kunz; how did that come in your possession, Mr. Westervelt? Was it left by her with you or not? A. Yes. Miss Kunz brought that letter back to me, I think, the day—I think I got that letter on the 31st of August or the 29th of August, 30th of August, the day after the contract was signed that letter was brought to me.

Q. Yes. A. I think that was the date that she was in my office.

Mr. Friedman—Is that something new?

Mr. Zabriskie—It is another letter.

Mr. Friedman—No objection.

(Letter marked Exhibit P-22 in evidence.)

Mr. Friedman—What exhibit is that?

Mr. Zabriskie—This one will be 22, P-22.

Mr. Friedman—Thank you.

Q. I show you a letter of August 22, 1927, from the Port Authority signed Ramsay; where did that come from, Mr. Westervelt? A. Well, that is also one of the letters that was brought back by Miss Kunz to me at about the time that we closed that contract. I cannot fix that exact day, but it was about that time.

Mr. Friedman—No objection.

(Letter marked Exhibit P-23 in evidence.)

Q. Now then, you say that the transaction—the day was fixed for closing, and you were present at the closing? A. Yes.

Q. Now then, did you have any talk with Miss Kunz about services and fees? A. Yes.

Q. Now, will you just tell the jury what that was, Mr. Westervelt? A. Well, the first time fees were mentioned was at the time, or about the time, that the Port Authority made the offer of the $80,000.00, and brought in the signed stipulation for immediate possession which is annexed to the blueprint map. At that time—

Mr. Friedman—May I interrupt, please; may we have the date, approximately?

The Court—Well, it is on there.

The Witness—It is on there, the date.

The Court—Look at the blueprint map; it is in evidence.

Q. Proceed, Mr. Westervelt. A. At that time, Miss Kunz made the remark to me that she supposed this was running into a lot of money. I laughed and said yes, we were getting into quite a large expense, and she said to me, "Well, you haven't told me how much you are going to charge me." I said no, because I didn't know. "Well," she said, "I do not care how much you charge as long as you get it out of the Port Authority," and I laughed and said there was no way I could get it out of the Port Authority; she would have to pay the bill, and the only way to get it would be to add

it to our sale price. Nothing further was said about that until after the contract had been signed. That contract was signed on the 29th day of August, which I believe was on a Monday; but the title was to pass on the 2nd of September, which was a Friday. On Wednesday, in between the 31st of August, I had Miss Kunz come to my office for the purpose of executing the deed, going over the deed, preparing it, and for the purpose of signing an agreement releasing the Port Authority from any damage by reason of what she alleged had been done to her property pending the negotiations. She came over to my office in the morning of that day, and I said to Miss Kunz, "Now, Miss Kunz, we have got down to the closing and we know what the price is going to be, and we know what has been done, and I want to discuss with you the charge." And she asked—I asked her—I put it this way to her: I said, "What do you think ought to be a fair price for these services?" And Miss Kunz said to me, "Well, whatever you say. You know more about that than I do." And I said, "Well, you certainly have an opinion. I think that I ought to charge you $4,000.00." And we had some little discussion about the $4,000.00, and she wanted to know how I arrived at it. And I said, "Well, we have had this matter up since the 21st day of June. We have had trespasses, and we have had the erection of the board fence, to which you objected; we have had negotiations, offers made, counter offers, the property appraised by appraisers under my advice, and I have got the Port Authority up on this property from $68,500.00 which was the best offer they had made us voluntarily to $84,000.00, and I said, "I think $4,000.00 is a very reasonable

proposition." And Miss Kunz finally said, "Well, all right, if you think that is so, all right, I will pay it, but can I pay it in instalments;" she says "I will give you $1,000.00 down now, and $1,000.00 a month until it is paid." And I said, "Why, Miss Kunz, I do not see any reason why I should do that. You are getting $84,000.00 cash now, and it is easier to pay now than afterwards." And Miss Kunz said, "Well, I have a sentiment about that $84,000.00; I want to put it in the bank in one lump sum." And I said, "Well, haven't you any other money? Haven't you any other bank accounts?" She said yes, but she didn't want to lose interest on them; they were savings accounts. "Well," I said, "what is the difference whether you lose interest on what you have got in your savings account, or whether you lose interest on what you are going to deposit?" And she said, finally, "Well, all right," she would take it out of one of her old accounts and she would have a check prepared and hand it to me on the closing so that she could take the check that she received from the Port Authority and deposit it in one lump sum. We agreed on that, and I said, so—so that she would be sure and get the name right on the check, that I would render her—give her a bill that day. I called in one of the young ladies from my office, dictated the bill, had it written up on the typewriter, and handed it to Miss Kunz on the 31st day of August. She took that with her, when we went down and closed the title. After the closing was over, I asked her where her check was. She told me that she had not had time to go to the bank that morning. She would see me the first of the next week, and she has never been in my office

since, except on one occasion when the summons had been served upon her.

Q. So you fixed a price at $4,000.00? A. $4,000.00, to which she agreed.

Q. And do you consider that as a fair and reasonable charge for the services rendered by you to Miss Kunz? A. I certainly do.

Q. And no part of it has been paid? A. No part of it has been paid, no.

Mr. Zabriskie—I think that is all.

The Court—You reserve cross-examination, and permit the various attorneys who are going to testify—

Mr. Zabriskie—I will just ask one more question.

By Mr. Zabriskie:

Q. Were there other incidental services than those that you have detailed, Mr.— A. Oh, yes, there were a great many consultations over the telephone, and I think I had four or five consultations with Mr. Lanterman and a Mr. Dudley over this matter that, of course, have not been testified to in detail.

Q. And you said something about sixty-eight thousand, five hundred. You had negotiations which led up to that, which was the very top notch offer at one time? A. Well, that is contained in one of the letters that is now in evidence.

Q. Then I will withdraw you at this time so as to co-operate with the lawyers.

(Witness excused.)

ARCHIBALD C. HART, sworn as a witness on behalf of the Plaintiff, testifed as follows:

Direct Examination by Mr. Zabriskie:

Q. Mr. Hart, you are a member of the bar? A. Yes.

Q. And where is your practice, in what county? A. Bergen County, largely.

Q. And you have been practicing how many years? A. Since 1895 or 1896. Something over thirty years, I think.

Q. And have you in your practice had dealings in connection with real estate negotiations? A. Yes.

Q. Big ones and small ones? A. What are big ones?

Q. Well, have you had a varied experience? A. Yes, large; up to several hundred thousand, probably.

Q. Now, have you listened to the testimony of Mr. Warner W. Westervelt in this case? A. Practically all of it.

Q. You have heard him detail the services that he— A. And I have heard that which I did not hear from him.

Q. And what do you say as to the reasonableness or unreasonableness of a charge of $4,000.00?

Mr. Friedman—Objected to.

Q. For the services rendered in this by him?

The Court— I did not hear the question.
(Question read.)

Mr. Friedman—I object on the ground that a proper hypothetical question has not been laid down as a foundation for this.

(Argument.)

The Court—I will sustain the objection.

Mr. Zabriskie—Your Honor sustains the objection?

The Court—Yes.

Mr. Zabriskie—Your Honor thinks there should be—

The Court—I think you should incorporate the facts.

Mr. Zabriskie—Then your Honor will allow me an exception for the purpose of the record.

Q. Now, Mr. Hart, assuming that the plaintiff in this case is a member of the bar of some twenty-one years standing, and that his practice during the time he practiced law embraced many important real estate transactions, that he began serving the defendant Miss Kunz as counsel on June 21st, 1927, and continued to serve her as such counsel until September 2nd, 1927, in connection with the transaction that is the subject-matter of this suit, that he had correspondence with the Port of New York Authority and with the Public Service Company, he had telephone and personal conferences with the representatives of the Port Authority, that the Port Authority offered her seventeen thousand, five hundred dollars for a piece of her property containing one and fifty-three-one-hundredths acres, which piece embraced all of the frontage of her property, that subsequently the Port Authority offered to pay sixty-eight thousand

five hundred, and indicated unless that figure was accepted condemnation proceedings would be begun forthwith, that figure was arrived at by appraisers selected by the Port Authority, that the entire piece of property contained 2.94 thousandths acres, more or less, and in reply to negotiations, a condemnation proceeding was filed, that a cash consideration of $84,000.00 was offered by the Port Authority to the defendant through the negotiations conducted by the plaintiff, the contract for the purchase of the property was examined and passed on by the plaintiff, that the deed delivering title to the premises involved was written by the plaintiff, that other papers were drawn by the plaintiff, would you say that $4,000.00 was a fair and reasonable charge for the services rendered by the plaintiff to the defendant?

Mr. Friedman—Objected to on the same ground.

The Court—I will allow it.

Q. Yes? A. Yes.

Mr. Zabriskie—Cross-examine.

Cross Examination by Mr. Friedman:

Q. Mr. Hart, you do not know how many hours' work was done by Mr. Westervelt, do you? A. I have heard the testimony.

Q. But you do not know how many hours of work he put in, do you? A. I judged the time from his testimony. I wasn't alongside of him.

Q. Well, how much do you think an hour of Mr. Westervelt's time is worth as a lawyer? A. In

a case of this type which has been so extremely successful, I would not divide the service into laborer's pay at so much an hour.

Q. It depends on the amount involved? A. Yes, largely, the responsibility.

Q. Well then, the more there is for the client, the more there would be for the lawyer; is that your idea? A. There would be for me as a lawyer; I do not know what he would do.

Q. Well now, how much do you think an hour's work is worth as a lawyer, a realtor, as Mr. Westervelt? A. I doubt that I could figure lawyer's services at so much an hour. Do you care to have me explain?

Q. Well, that answers the question. Would you fix it by the day, per diem? A. I would fix it by the responsibility, the amount of time involved, the character of the client I had to do with, whether he or she was pestiferous or not, and many of those things; they all enter into it.

Q. You said the amount of time. Now, how much do you think the time is worth? A. I had a fee of $25,000 for two weeks' services one time.

Mr. Friedman—I object to that.

A. (Continuing) And in another case, I had nothing for the same time.

Q. I asked you how much the time of Mr. Westervelt was worth in Mr. Hart's opinion; I am not interested in what Mr. Hart got. A. Well, I do not know. I never hired him as a lawyer. I do not know. I cannot tell you, Mr.—

Q. Have you any grievance against the defend-

ant in this case? A. Not the slightest. I have known her for a great many years.

Q. You are a friend of Mr. Westervelt? A. I beg your pardon?

Q. You are a friend of Mr. Westervelt? A. Yes. I admire him very much.

Q. Are you being paid to testify as an expert in court? A. I beg your pardon?

Q. Are you being paid to testify as an expert in court? A. No.

Q. You are doing that because you are a friend of his? A. I was subpoenaed, I am sorry to say.

Q. You are subpoenaed? A. Yes.

Q. And you would testify for any other lawyer who would sue for a fee, isn't that correct? A. If he subpoenaed me.

Q. Yes. And you would testify in his favor if he sued for a fee, isn't that correct? A. I would tell the truth.

Q. Yes.

Mr. Friedman—That is all, Mr. Hart.
The Court—That is all.

WENDELL J. WRIGHT, sworn as a witness on behalf of the Plaintiff, testified as follows:

Direct Examination by Mr. Zabriskie:

Q. Mr. Wright, where do you live? A. Hackensack.

Q. And where do you practice law? A. I have been practicing for about twenty-five years in Bergen County.

Q. And what has been the nature of that practice? A. Very general practice, most everything.

Q. You were formerly with the firm of Wakelee, Thornall & Wright? A. That was a New York firm; not a New Jersey firm.

Q. And you are now the senior member of the firm in Bergen County? A. I am connected with the firm in Bergen County, yes.

Q. And that is the firm of— A. Wright, Van der Burgh & McCarthy.

Q. Now, what has been the nature of your practice, Mr. Wright? A. Almost everything.

Q. And have you had any experience in connection with negotiations concerning the sale of real estate of value? A. I have had a great many occasions where I have been retained in connection with the sale and the purchase of real estate or the acquisition of it.

Q. And have you been in court while Mr. Westervelt was testifying here today? A. Yes; all the time.

Q. You say all the time? A. Yes.

Q. Yes. Now, assuming that the—

Mr. Friedman—I won't object any more.
The Court—Then you will permit the question?
Mr. Friedman—Yes.
The Court—All right.

Q. Now then, in your judgment, is the charge of four thousand for services—$4,000.00 for the services that have been testified to by Mr. Westervelt reasonable or unreasonable? A. Yes, sir; reasonable.

Mr. Zabriskie—Cross-examine.

Cross Examination by Mr. Friedman:

Q. Mr. Wright, you are a friend of Mr. Westervelt's? A. Yes.

Q. And have you also been subpoenaed to come in court? A. I was subpoenaed, yes.

Q. Did you get a subpoena fee? A. I did.

Q. And when did you get the subpoena? A. This morning.

Q. Did you talk about the case with Mr. Westervelt or Mr. Zabriskie before you came into court? A. I talked about the matter briefly to Mr. Westervelt some two or three weeks ago, when the case was first to come up; he called—he asked me if I would testify.

Q. And did he notify you he was going to call you as an expert? A. He asked me if I would testify as to the reasonableness of the fee, yes.

Q. Did he tell you what his fee was at that time? A. Yes. He told me substantially the same thing he testified to here this morning.

Q. And can you tell us what an hour's work of a lawyer is worth in a matter of this kind? A. It all depends upon the various circumstances.

Q. For instance? A. For instance, the character of the case, the amount involved, the client, the result; all of those are elements which enter into it.

By the Court:

Q. Mr. Wright, do you take into consideration a man's experience and standing at the bar? A. Most certainly, a man's experience and standing at the bar is a very important element to consider.

By Mr. Friedman:

Q. I see.

Mr. Friedman—That is all, Mr. Wright.

CLARENCE MABIE, sworn as a witness on behalf of the Plaintiff, testified as follows:

Direct Examination by Mr. Zabriskie:

Q. Mr. Mabie, you are a member of the bar? A. Yes.

Q. And would you tell the jury of how many years standing? A. I think I was admitted in 1895, thirty-two years.

Q. Then you have been practicing continuously in Bergen County ever since? A. Bergen County ever since.

Q. Have you had dealings in connection with real estate negotiations? A. I was ten years County Counsel of Bergen County, and during that time I had many cases involving real property.

Q. Have you listened to the testimony of Mr. Warner W. Westervelt in this case? A. Yes.

Q. All of his testimony? A. All of it.

Q. In your judgment, is the charge of $4,000.00 for services in this case reasonable? A. It is.

Mr. Zabriskie—Cross-examine.

Mr. Friedman—No questions.

The Court—That is all, Mr. Mabie.

GUY L. FAKE, sworn as a witness on behalf of the Plaintiff, testified as follows:

Direct Examination by Mr. Zabriskie:

Q. Judge Fake, you are a member of the bar of Bergen County? A. I am.

Q. And have been for how long? A. Since nineteen—November, 1903, I believe.

Q. And have you had dealings in connection with real estate negotiations for clients? A. I have. A great many of them.

Q. On a large scale? A. Yes, many of them on a large scale.

Q. Have you listened to the testimony of Mr. Warner W. Westervelt in this case? A. I have.

Q. All of it? A. All of it.

Q. And, in your judgment, is the charge of $4,000.00 made for services reasonable? A. It is.

Mr. Zabriskie—Cross-examine.

Mr. Friedman—No questions.

The Court—That is all.

Mr. Zabriskie—Now then, I suppose Mr. Westervelt may go back to the stand for cross examination.

WARNER W. WESTERVELT, JR., the plaintiff, recalled, testified as follows:

The Court—You have other witnesses for the plaintiff yet?

The Witness—Yes; two, anyway.

Mr. Zabriskie—Yes. Mr. Leslie and Mr. Ellis, the other two who co-operated.

Cross Examination by Mr. Friedman:

Q. Mr. Westervelt, did Miss Kunz ask you to sell this property for her? A. No.

Q. She did not tell you to sell the property for her? A. No. She did not tell me to sell it for her.

Q. How did you come to sell it? A. I did not sell it for her.

Q. Well, didn't you testify that it was through your instrumentality that the property was sold to the Port of New York Authority? A. No.

Q. Didn't you say negotiations were pending, and that you negotiated all these conferences? A. I conducted the negotiations, yes.

Q. Yes. And the result of those negotiations was the sale of this property? A. Yes.

Q. And it was your instrumentality that caused the sale of the property; isn't that so? A. No. It was my instrumentality that caused the price that was paid.

Q. Well, you procured the Port of New York Authority to buy this property? A. No.

Q. Isn't that so? A. No.

Q. Well, they offered a certain sum, didn't they, for the purchase of this property? A. Yes.

Q. And they gave you that sum? A. No, they didn't give me that sum.

Q. I mean they gave you that sum to see whether you could get it sold for that price? A. No, they didn't do that.

Q. Well, they offered something like $17,000.00 in the first instance; isn't that correct? A. Yes. They made an offer of $17,500.00.

Q. Yes. A. For one and five-one-hundredths acres of this property.

Q. Yes. Then you took that price and went to Miss Kunz, didn't you? A. I told her of the offer, yes.

Q. Yes. And she did not care to be bothered, isn't that right? A. No. That is not true. She did care to be bothered, but she would not take that price. She asked me what I thought about it, and I told her it was not enough.

Q. Yes. And then you went after that and you got them up a little higher? A. Not on that piece.

Q. Pardon? A. Not on that piece, we did not.

Q. Well, on the piece that was sold? A. On the whole tract, yes.

Q. Yes. A. Much higher.

Q. You got them up to $84,000.00? A. Yes.

Q. Isn't that so? A. Yes.

Q. You asked for more, didn't you? A. She asked for more.

Q. Well, you were her lawyer? A. Yes.

Q. You asked for more for her benefit, didn't you? A. I conveyed her price of $100,000.00, yes.

Q. Yes. And the Port of New York— A. I said I did. I want to correct that. I didn't, but that was put in a letter that was dictated in my office by Mr. Ellis.

Q. Well— A. That is right.

Q. —that was just the same as you did it? A. Well, I didn't want you to say afterwards that I didn't do it; that is all; I wanted to get it clear in the jury's mind how that was done.

Q. Well, anyway, the Port of New York Authority refused to give $100,000.00? A. That is right.

Q. That is right. And you got them down to eighty-four or up to eighty-four? A. That is right.

Q. And with that figure in mind, which you submitted to them, they accepted it, didn't they? A. Who accepted it?

Q. I say the Port of New York Authority agreed to purchase for $84,000.00? A. That is right.

Q. You took that figure to Miss Kunz, didn't you? A. No.

Q. Well, didn't you notify Miss Kunz about the $84,000? A. No.

Q. You did not? A. No.

Q. Who did? A. That $84,000.00 was fixed in the office of the Port Authority with Miss Kunz, between Miss Kunz, Mr. Lanterman, Mr. Dudley, Mr. Horowitz and Mr. Ellis.

Q. Well, that was the result of some of your labors, wasn't it? A. It was the result; but I never submitted the eighty-four-thousand dollar proposition.

Q. Well, while it was a result of your labors— A. Yes.

Q. —you were instrumental in getting this $84,000.00, weren't you? A. That is true.

Q. You did not have to be told, that was fixed already? A. Yes.

Q. Now, originally your fee was $4200, wasn't it? A. Never.

Q. Wasn't it five percent of eighty-four— A. Never.

Q. —thousand? A. Never.

Q. You say never? A. No, sir.

Q. Did you ever attempt to get the Port of New York Authority to purchase that property for

$100,000.00? A. Well, I submitted her offer to sell for $100,000.00, yes.

Q. You just submitted it? A. Yes.

Q. Did you argue about it with them? A. That was sent in a letter and declined in a letter.

Q. Did you ever have any conference with Mr. Dudley or Mr. Lanterman or Mr. Ramsay about the $100,000.00 purchase price? A. Yes.

Q. At their New York office? A. No.

Q. At what office? A. My office, and over the telephone, both.

Q. Well, about how many conferences did you have about that? A. I could not tell you. I haven't kept track of my telephone conversations.

Q. Well, you tried to persuade them to pay $100,000.00, didn't you? A. Yes, yes.

Q. And, of course, you tried very hard to make them give eighty-four thousand? A. Well, it took a whole morning.

Q. Yes. A. A little over.

Q. That was the figure submitted by Miss Kunz, wasn't it, eighty-four? A. Eighty-four, no, it was not. I say it was not. I should not say that, because I was not present; but I am informed it was not.

Q. She wanted more? A. I understand she was willing to take less.

Q. Well, she wanted more, didn't she? A. She asked for a hundred thousand.

Q. Yes. Well, you finally got her down to eighty-four, and you got the Port of New York Authority down to eighty-four? A. There was an offer made over her signature of $90,000.00.

Q. Well, I say, finally you got the Port Authority— A. Up to eighty-four.

Q. —of New York to give eighty-four thousand? A. Yes.

Q. And you got Miss Kunz agreeable to accept that? A. That is right.

Q. And then you got the purchaser and the seller together, didn't you? A. Yes, they came together.

Q. And it was through your agency that this sale took place, isn't it, wasn't it? A. I do not know what you mean by agency.

Q. Well, I say, it was through your instrumentality that this contract was executed? A. Yes.

Q. Yes. A. I will say that.

Q. And you had told Miss Kunz that you wanted five percent of $84,000.00, didn't you? A. I did not.

Q. Didn't you? A. No, sir.

Q. Well, did you have any percent in mind to charge as your fee? A. No.

Q. You did not have any percent in mind? A. No.

Q. And if it wasn't through your labors and services in this case this contract would never have been executed for $84,000.00, would it? A. I do not think it would.

Q. No. You did all the negotiations? A. Well, Mr. Leslie and Mr. Ellis and myself.

Q. I mean your office? A. Yes; that is right.

Q. Your fee includes their services also? A. Certainly.

Q. You never had a contract in writing about the services? A. No.

Q. Nothing said about that? A. Yes, there

was something said about it, but there wasn't anything in writing about it.

Q. I mean anything about making a written contract, nothing about that said between you and Miss Kunz about having it in writing? A. No.

Q. Now, are you sure when you say that if it wasn't for your services, this contract would never have been executed and the property never sold? A. I did not say that.

Q. Pardon? A. I did not say that.

Q. Well, didn't you say if it wasn't for you, the contract would never have been executed? A. I said this contract would not have been signed; that is right.

Q. Yes. And the property would never have been sold for that price? A. I did not say that.

Q. No. Well, do you say that now? A. No. I do not know what they would have paid for it.

Q. No. A. Because it would have gone to condemnation proceedings.

Q. But it would never have been signed for $84,000.00, the contract of sale for this property? A. I do not think it would.

Q. You were responsible absolutely for the sale of it at that price? A. No. I would not say that I was responsible absolutely for the sale of it at that price; no, I would not say that.

Q. Well, you were very instrumental in getting it over; isn't that right? A. I think there is no doubt of that, yes.

Q. Yes. So you really sold it? A. No, I did not sell it.

Q. Well, who were you representing? Were you representing the purchaser or the seller? A. I was representing Miss Kunz.

Q. Miss Kunz. You wanted to see her sell that property, didn't you? A. I didn't care whether she sold it or not. I wanted her to get—

Q. Well, you knew you would get a fee if it was sold, didn't you?

Mr. Zabriskie—Let him answer.

Mr. Friedman—All right, sir.

(Answer read.)

A. (Continuing) To get the best price she could for it as long as they were determined to have it.

Q. Well, you wanted to see her sell it? A. No. I didn't care whether she sold it or not, but the Port Authority determined and said in their letter they were going to take it by condemnation.

Q. Yes. A. If she would not agree to it, so all I was doing was trying to get them together at the best price I could possibly get for her.

Q. Well, that is what I mean, Mr. Westervelt. A. That is right.

Q. You knew the condemnation proceedings were coming on? A. Yes.

Q. And you wanted to make sure she would get a good price? A. That is right.

Q. And you wanted to see her sell this property and get a good price? A. I wanted to see her get the best price she could.

Q. And then you got them both together, as you said? A. Yes, that is true.

Q. You are sure about that? A. Yes.

Q. You got them both together, the purchaser and the seller? A. That is right.

Q. All right. Now, some of these letters which you have dictated to the Port of New York Author-

ity have a little recital "My attorney"; Mr. Westervelt, you dictated those letters, didn't you? A. If you will show me the letter, I can tell you; I cannot tell you without seeing it.

The Court—We will take a five-minute recess.

(After a short recess.)

Mr. Friedman—Will you read the last question and answer?

(Question and answer read.)

Mr. Friedman—I will withdraw that question.

Q. Mr. Westervelt, you testified a moment ago that you brought the purchaser and seller together; is that correct? A. I had them together the day they signed the contract, if that is what you mean.

Q. I beg your pardon? A. I had them together the day they signed the contract, if that is what you mean.

Q. Well, you said you brought them together; do you mean that? A. I do not understand your question.

Q. Did you bring them together? Do you understand that question, Mr. Westervelt? A. I do not know what you mean by bringing them together.

Q. You had them both agree on the purchase price? A. Yes.

Q. And the property to be acquired and the property to be sold? A. Yes.

Q. Now, when a figure would be given to you by Miss Kunz for the sale of this property; you in

turn would take it up with the Port of New York Authority in New York City or New York State, wouldn't you? A. Miss Kunz never gave me a figure but the one item of $100,000.00. That is the only one she ever fixed herself on the property.

Q. Yes. Did you submit that? A. Yes

Q. To the Port of New York Authority? A. Yes.

Q. Was it turned down? A. Yes.

Q. They gave you a counter offer of eighty-four thousand later on as a final amount they would pay? A. They never gave an offer of $84,000.00 until the day the contract was signed.

Q. Yes. But I say that was the last figure they submitted to you? A. They never submitted that figure to me. That was submited to Miss Kunz direct at that conference when the contract was signed, the very day it was signed.

Q. And the Port Authority of New York told you they would be willing to offer that figure at any time? A. They offered $80,000.00 to me.

Q. They offered that to you? A. Prior to that day.

Q. Prior to that day? A. Prior to that day.

Q. Well, the next day you heard or you found out that they offered $84,000.00? A. No. I never heard that they offered $84,000.00.

Q. Well, I mean after they offered $84,000.00, you subsequently found that fact out from someone, or from some person you found that out? A. The $84,000.00 was arrived at at the final negotiations of the contract.

Q. Yes, sir. A. On the day it was signed.

Q. Yes, sir. A. Between all the parties.

Q. Well, I say you found that out, subsequently

you found that out? A. Subsequent to what?

Q. To the offer of $80,000.00 being made? A. Oh yes, that is right.

Q. Yes. And you persuaded or conferred with Miss Kunz, and told her it would be an acceptable figure for her to accept? A. Mr. Ellis did that, I believe.

Q. Well, your office? A. I wasn't present. I cannot testify to what actually transpired.

Q. Well, your officer did that in your absence? A. Mr. Ellis was present when that was done, representing my office, yes.

Q. And finally the contract for that sum was executed? A. Yes.

Q. What was the real nature of your work in this case? What results were you looking for, Mr. Westervelt, in representing Miss Kunz in this case? A. I was endeavoring to see that the Port Authority of New York, or any other person, did no damage whatever to her property without either acquiring the property by an agreement with Miss Kunz, or taking it by condemnation proceedings and paying therefor its full value.

Q. Yes. And you were looking forward to the time when the property was sold that a good figure was received for it? A. I considered it my duty to see that she got all she could get for the property, yes.

Q. Yes. And you helped her get that figure? A. I think I did.

Q. And you helped the Port of New York Authority give that figure? A. No. I had nothing —I wasn't advising the Port of New York Authority.

Q. No. But I say you were attempting and trying to make the Port of New York Authority give her a good figure? A. Certainly.

Q. Yes. And when they offered $84,000.00, you considered that a good figure? A. I do consider that a good figure.

Q. Yes. And you told Miss Kunz to accept it? A. No, I did not, because I was not present.

Q. Well, you told her it was a good figure, anyway? A. No, I do not think I even told her that. I do not recall that I told her that myself.

Q. Well, when they offered $84,000.00, didn't you made any comment about that figure to Miss Kunz? A. No.

Q. You did not? A. I wasn't present.

Q. Do you know whether your officers did? A. I believe Mr. Ellis, did, yes.

Q. Yes. A. I have been told so since.

Q. All right. Now, you were not the agent of the Port of New York Authority in this case? A. No.

Q. You were the agent of Miss Kunz? A. I was her attorney. I considered myself so.

Q. Well, you were her agent, as far as the selling and buying of this property was concerned, you represented her? A. Yes.

Q. Now, did the Port of New York Authority ever write any letters to you concerning the different prices to be paid for this property? A. Yes.

Q. And you took them up with Miss Kunz? A. Yes.

Q. And then you would write a letter to the Port of New York Authority about it? A. Yes.

Q. Whether that was accepted or disagreeable? A. Yes, on several occasions.

Q. So, in the last analysis, it came down to a point where this property had to be sold for fear of condemnation proceedings? A. It didn't have to be sold, no.

Q. For fear of condemnation proceedings, I said? A. It didn't have to be sold.

Q. Well, didn't you think it was advisable to sell it? A. I did.

Q. Instead of having it condemned? A. I did.

Q. Yes. So, in the last analysis, you thought the best thing to do was to sell it rather than have it condemned? A. For $84,000.00, I should say yes.

Q. Yes. Yes. And you were working right along to see that she sold that property and got a good figure for it; isn't that right? A. No, it is not right. I did not care whether she sold it or not. I wanted her to get the best price she could get.

Q. Yes. Well, if she didn't sell it, she couldn't get the price, could she? A. I do not think she would have gotten $84,000.00 under condemnation, no.

Q. All right, sir. So I say, you were working right along to see that the property was sold and that a good price was received for it? A. No. That wasn't true. I wasn't trying to see that the property was sold.

Q. Well, you were trying to see that she got a good price for it? A. Yes.

Mr. Zabriskie—I think that question has been answered a good many times. I object to repeating it so often.

Q. Did you draw up this contract, Mr. Westervelt, for the sale of the property? A. Which contract?

Q. The contract for the sale of the property? A. No. I did not draw the contract.

Q. Who drew the contract? A. I do not know.

Q. The Port of New York Authority? A. I do not know. I was not present.

Q. Oh, you were not present? A. No.

Q. Do you know whether Mr. Ellis from your office drew it up? A. I cannot tell you. I was not present.

Q. Do you know who drew the deed up for the sale of the property? A. Yes, I drew a deed.

Q. You drew the deed. But you never found out who drew the contract? A. No. I do not think I ever asked who drew it, who actually drew it.

The Court—Did you read the contract?

The Witness—Oh yes.

The Court—Pass on it?

The Witness—Yes, sir. I—in answer to your question, I will say this, that the contract was signed on the 29th of August. Before it was signed, Mr. Ellis called me on the telephone and read to me the proposed contract, and he and I discussed several items in that contract, and then the contract was signed up; but he called me on the telephone and read it to me for my approval before it was actually signed.

Q. Now, you say Miss Kunz promised to pay

you $4,000? A. She agreed to pay me that, $4,000, yes, sir.

Q. For your connection with the sale of the property? A. For my services in connection with the matter, yes.

Q. For the sale of the property? A. Yes.

Q. Your services include both professional services and what we call un-professional services, that is, services both of a sort of brokerage and also lawyer's services? A. I did not consider them so, no, sir.

Q. Well, I mean, Mr. Westervelt, that any advice you would give her as to legal matters, that would be professional service, wouldn't it? A. I consider this all a legal matter.

Q. Yes. Well, it was not strictly professional if you tried to—I mean, in the light of legal services, legal advice as to the right drawing of contracts and deeds; I classify those as professional; now, un-professional services I classify, trying to sell the property, dickering as to price; now, your services included both of those, didn't they? A. My services were strictly legal services.

Q. Strictly legal? A. Yes, sir.

Q. Well, did they include both legal advice, drawing papers, corresponding and dickering as to price? A. I do not know what you mean, dickering as to price. I don't know what you mean by that term.

Q. Well, one offer, and then a counter offer? A. I made no offers, if that is what you mean. No, I did not dicker on the price.

Q. Well, offers were made to you? A. Yes.

Q. And you sent back what you received from your client? A. Exactly.

Q. Yes. Well, then, you did make offers for your client? A. No, I did not make any offers. I did not dicker.

Q. For your client? A. I did not dicker.

Q. As to price? A. As to price.

Q. You are sure about that? A. Yes.

Q. Well, when they offered you $68,500.00, on advice of your client, you turned it down, didn't you? A. I turned it down without the advice of my client, the $68,500.00 I told them I wouldn't even submit it to her.

Q. Then you did dicker as to price, didn't you? A. No, I did not. I did not make them any price.

Q. Well, you wouldn't accept that? A. I told them I would avise my client not to accept that.

The Court—We will take a recess until two o'clock.

(Recess.)

After recess. 2:00 o'clock P. M.

WARNER W. WESTERVELT, JR., recalled for further cross-examination, testified as follows:

Mr. Friedman—Will you read the last question, please?

(Last question and answer read.)

By Mr. Friedman:

Q. Now Mr. Westervelt, when Miss Kunz came to you, what services did she ask you to give her? A. Well, when do you mean?

Q. From the time she first came to your office

until the closing of the title in this case on this property? A. Well, when she first came to me, she asked me to write—to stop the trespassing on her property. After—

Q. By whom? A. By the Port Authority.

Q. Yes. A. And by the Public Service.

Q. Yes. A. After I received the reply to those letters, then she called again and wanted to—in those letters, I had said that they musn't do anything further without making some negotiations with her to acquire the property if they wanted it.

Q. And you said what? A. In the letters I advised the Port Authority and also the Public Service that they must keep off of the property until they had made some definite arrangement with Miss Kunz to acquire the property if they wanted it.

Q. Yes. A. And then they came, Mr. Lanterman and Mr. Dudley came to my office, and in reply to those letters, having first called me on the telephone and made an appointment, and discussed with we whether or not it was possible to acquire the property.

Q. And what did you tell them? A. I told them that I would take up with Miss Kunz any proposition they had to make.

Q. As to the sale of the property? A. As to the acquiring of the property by the Port Authority.

Q. And did you write those letters to the Public Service and the Port Authority? A. Yes.

Q. How long did it take you to write those letters and dictate them? A. Well, I do not know how long it took to do the dictating. I know that

Miss Kunz on that particular day was in my office. She came in first thing in the morning, and she was there until, I should say, noon or after, all the morning long.

Q. Well, how long—A. Discussing the matter.

Q. Well, how much of your time was occupied in sending those letters out? A. Why, I do not know.

Q. Don't you know? A. No, of course, I don't.

Q. Now, those are two letters that you sent out? A. Why, the two that I sent on the 21st of June, yes.

Q. Yes. Now, when Mr. Dudley and Mr. Lanterman came to your office, how long did you spend with them in conference? A. Well, again, I cannot tell you the exact number of hours. It was practically the whole morning. I think they came in about ten o'clock in the morning, about half past nine or ten o'clock in the morning, and took up the entire morning on that first occasion.

Q. Yes. Until twelve o'clock? A. I cannot tell you the exact hour. I do not remember.

Q. What were you talking about? A. About the use of this property.

Q. About the trespasses? A. About the use of this property for the bridge purposes.

Q. For bridge purposes? A. Yes.

Q. And who opened the conversation about the bridge purposes? A. I do not remember who opened it.

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

Q. And what did they say to you about bridge purposes of this property? A. They told me that they were—that they had authorized their en-

gineers to—the engineers of the Port Authority to go upon this property, clear away the underbrush for a strip of about five feet wide for the purpose of running the lines necessary for the bridge approach, and that they supposed that that was what these engineers had been doing that occasioned my letter. They also stated that, contrary to what Miss Kunz had told me, they had already made known to Miss Kunz their desire to acquire this acre and a little over for this purpose, and that she had declined to name any price that she would take for it.

Q. And you asked them what price they had to offer? A. Yes, I think I did in the course of that conversation.

Q. Yes. A. That day.

Q. Why did you ask them that? A. Because they said they wanted to acquire that piece of property.

Q. Yes. But Miss Kunz never authorized you to talk about the purchase of this property at this time, had she? A. Certainly, she had.

Q. At this time? A. Certainly.

Q. Well, didn't she tell you just to write letters to these people about the trespasses on her property? A. She told me—asked me to stop the trespasses there.

Q. Yes. A. Until those people had taken some steps to acquire her property.

Q. Yes. But she did not tell you to say that these people should take an interest and try to purchase her property, did she, at this time? A. I did not understand that question.

Q. Did Miss Kunz tell you at this time anything about the sale of this property to the Port of New York Authority? A. At what time?

Q. At the time Mr. Dudley and Mr. Lanterman were in your office? A. She was not present.

Q. When she was first in your office, she told you to send letters to these parties about the trespasses; is that correct? A. That is correct.

Q. And in reply to your letter, Mr. Dudley and Mr. Lanterman came to your office from the Port of New York Authority; is that correct? A. That is true.

Q. You were talking about these trespasses on the property of Miss Kunz? A. We were talking about the acquiring of this property by the Port Authority.

Q. Well, Miss Kunz, when she first came to your offiice, did not talk to you about the sale of this property, did she? A. She certainly did.

Q. In addition to the trespasses? A. She certainly did. And she said—

Q. What did she say? A. She said that they had made no effort or had not approached her at all with the idea of purchasing the property, nor had they made any offer up to that time.

Q. Yes. A. That is right.

Q. Did she tell you anything about the sale of her property? Did she tell you to try to get her an offer? A. She did not tell me to try to get an offer, no.

Q. What did she tell you? A. She told me they had made no offer.

Q. Is that all? A. Why, we talked a whole, long time, we talked the whole morning about it.

Q. All right. What did she tell you and what did you tell her that first time? A. Well, I told

her that as far as the trespass was concerned, they had a perfect right on the property if they had made her an offer to acquire the title to the property, and that she could not prevent the Port Authority acquiring the property if they so desired; it was merely a question of either agreeing with them on the price, or their issuing a—starting a condemnation proceeding, and acquiring it at a price to be fixed by the commissioners in that proceeding. I explained that to her on the 21st day of June.

Q. Is that all you told her that morning? A. I do not know. I may have told her a lot more. I do not recall.

Q. Can you recall if you told her anything else? A. I do not recall of anything particular beside that.

Q. Now, what did she tell you at that time about her property, or anything else? A. She said she was willing they should take it if they paid enough for it.

Q. Anything else? A. I do not recall anything particular now, no.

Q. Are you sure about that? A. Why, she said a lot of things, of course, we talked for half a day.

Q. What did she say? A. I cannot repeat offhand everything that she said. I do not pretend to.

Q. You remember she promised to give you $4,000.00, don't you? A. Not that day, no.

Q. Well, at some time? A. Not that day.

Q. At some time? A. Nothing was said about it on the 21st of June.

Q. I say, at some time you remember she agreed

to give you $4,000.00? A. On the 31st day of August, yes.

Q. Yes. You didn't forget that, did you, Mr. Westervelt? A. No.

Q. No. But you do not recall what she said the first time she was in your office about the sale of this property, outside of the fact that she would be willing to sell it if they gave her a good price; is that correct? A. That is the gist of our conversation.

Q. Yes. A. At that time, yes.

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

Q. Now, when Mr. Dudley and Mr. Lanterman came to your office—A. Yes.

Q. —in response to the letter which you sent the Port of New York Authority about the trespasses, what prompted you in speaking to Mr. Lanterman and Mr. Dudley about the sale of this property when Miss Kunz gave you no authority to talk about selling, purchasing, or fixing any price? A. I think, if you will look at the letter that I wrote to the Port Authority under date of June the 21st, you will see that in that letter I asked them to do nothing further until they had arranged to acquire the title to this property.

Q. Yes, sir. But I ask you again, Mr. Westervelt, what prompted you, in talking to Mr. Lanterman and Mr. Dudley in your office about the purchase price of this property when they were there the first time? A. They came up in response to that letter, and that letter told them that they must acquire the right to go on that property if they wished to use it. They came up to acquire it. That was the purpose of their call.

Q. And what did you tell them when they came there about acquiring this property? A. What did I tell them?

Q. Yes. When they were inquisitive about the possession of this property? A. I do not think I told them anything. I think they came up with a proposition to buy this property.

Q. Did they give you a figure? A. They did.

Q. And what figure was it? A. $17,500.

Q. And what did you say? A. I told them it was not enough. I would not even submit it to my client.

Q. You would not even submit it to your client? A. No. That is what I told them.

Q. Why not? A. Because it was not enough money.

Q. Well, Miss Kunz never told you to do anything about the purchase price of this property, did she? A. She certainly did, that first day that she was in there.

Q. Well, as I understand you, Mr. Westervelt, Miss Kunz told you that she was willing to sell this property the first time she was in your office, is that right? A. Yes. Yes, she was.

Q. That is right? A. Yes, that is right.

Q. But she never authorized you to talk about what price this property was worth, or anything else about it, outside of the trespasses; isn't that right? A. No. That is not true.

Q. Well, what is the truth, then? A. The truth is set forth in that letter that I wrote to the Port Authority.

Q. Why did you say to Mr. Lanterman or Mr. Dudley that you would not consider the price of

$17,500.00? A. Because it was not enough money for that piece of property, in my opinion.

Q. Did Miss Kunz tell you to ask for any price for the property? A. Certainly.

Q. Well, when I asked you before, when Miss Kunz was in your office the first time, what took place, why didn't you say that? A. Well, I think I did cover that pretty thoroughly in my answer.

Q. You did not say anything about $17,500.00 —A. I did not.

Q.—when Miss Kunz was in your office the first time, did you? A. I did not know anything about $17,500.00 at that time. That figure was not mentioned until two or three days later when Mr. Lanterman and Mr. Dudley called at my office.

Q. Well, the first time she was in your office, did she mention any figure to you about the sale of this property? A. Yes.

Q. What figure did she say? A. Well, the first day that she was in there and I asked her what she thought the property was worth, Miss Kunz said she thought it might be worth $50,000.00.

Q. $50,000.00? A. Yes.

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

Q. Now, when I asked you a moment ago what took place between you and Miss Kunz the first time in your office,—A. Yes.

Q.—you didn't say anything about $50,000.00 then, did you? A. No. You did not ask me.

Q. Well, I asked you for everything that took place; isn't that right? A. Yes, and I told you; I cannot remember every word that was said.

Q. But you remember it now? A. Certainly. When you prompt me, I can remember it.

Q. And she told you it was worth $50,000.00? A. Yes, she thought—no, she didn't say that. She said she thought she ought to get $50,000.00. That is what she said.

Q. Did she tell you anything else that first time? A. Yes; she talked all morning.

Q. What did she say? A. I do not know. I do not remember.

Q. You do not remember now, again? A. No.

Q. All right. Now, when Lanterman and Dudley told you they would offer $17,500.00, you said it was not enough? A. That is right.

Q. You would not even submit it to your client? A. That is right.

Q. Now, when Miss Kunz was in your office the first time, did she ask you to get any figure for her on that property? A. Why, yes.

Q. What did she say? A. She said that she —I cannot tell you what she said in words. She authorized me that day to write that letter that I wrote to the Port Authority, and I dictated it in her presence, and as a part of that letter was contained the proposition that an offer must be made by the Port Authority before we would consent to their going on the premises. Now, the exact words I do not remember.

Q. Did she authorize you that morning to submit to any figures from the Port of New York Authority, or to deny any figures that they submitted to you for the purchase of this property? A. Did she instruct me on that?

Q. Yes. A. No, she did not.

Q. Why, then, did you say you would not submit it to your client, it wasn't enough, when she did not tell you to do it? A. Because it wasn't enough.

Q. Well, she did not tell you to say whether it was enough or not enough, did she? A. I was representing her.

Q. But she gave you no authority to pass upon any figure for the purchase of this property, did she? A. She retained me to look after her interests in this negotiation.

Q. But I ask you again, Mr. Westervelt, did she

The Court—No. We have been over that enough.

Mr. Friedman—All right, sir.

Q. Now, when is the second time she was in your office? A. Well, I cannot tell you the exact date it was. I think it was the day following the call of Mr. Lanterman and Mr. Dudley. I think it was the very next day she was in my office.

Q. And they are from the Port of New York Authority? A. That is right.

Q. And what took place the second time? A. Well, I told her that they had been in my office, that they had made me an offer of $17,500.00, and that we could get—in my opinion, we could get a great deal more than that; and I had told them I wouldn't even submit it to her, they would have to come up.

Q. Is that all? A. No. We talked again for, I suppose, two or three hours.

Q. Tell me everything that took place please? A. I cannot do it, sir; I do not remember.

Q. You do not remember? A. No.

Q. Now, did you write a letter to the Port of New York Authority—A. I wrote—

Q. —after Miss Kunz was in your office the second time? A. I think I wrote a good many of them.

Q. And what was the gist? A. I do not know. The letters are in evidence.

Q. Now, did Dudley and Lanterman come to your office again? A. I do not think Mr. Dudley called at my office again. Mr. Lanterman was there on several occasions. I do not think Mr. Dudley came but the once.

Q. Now, what discussions went on between you and Mr. Dudley or Lanterman, whoever it was that came to your office? A. Well, when?

Q. Pardon? A. When?

Q. The second time. A. I cannot tell you. I do not recall.

Q. You do not recall? A. No. If you will fix the date and tell me something about the subject, I can tell you.

Q. Well, when was the second time he came? Do you recall that? A. No; I do not remember.

Q. You do not remember that? A. No.

Q. Now, the first conference was on June 21st with Miss Kunz, is that correct? A. June 21st, that is right.

Q. Yes. And the next conference with Mr. Dudley and Mr. Lanterman was June 28th; is that right? A. No. I do not think that is correct, although I am not sure. I have not the dates with me. It was several days after I wrote that letter. That is all I know. I cannot tell you exactly, because I do not remember.

Q. About a week after? A. Well, I cannot tell you. I do not know.

Q. Was Miss Kunz at your office at that time when Mr. Dudley and Mr. Lanterman were at your office? A. On that first occasion that they were there, you mean?

Q. June 28th. A. I do not think she was, no.

Q. She was not? A. I do not think so. I am not sure about it, but I do not think so. She was there on one occasion and refused to see them. She was sitting outside waiting for me. She came in and she said she refused to talk to them, that I could conduct the negotiation, and she went out my private entrance, and left them sitting outside. What day that was, I could not tell.

Q. She said you could conduct the negotiations? A. With them.

Q. With them? A. Yes.

Q. For what? A. The acquiring of this property.

Q. For the purchase and selling of this property? A. For the acquiring of this property.

Q. For the acquiring of this property by the Port of New York Authority? A. That is right.

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

Q. All right. Was that the second time Dudley was at your office? A. I said I thought Mr. Dudley was only there on one occasion. I am not absolutely sure about that, but I think he was only there once.

Q. Did you negotiate with Mr. Dudley for the acquiring of this property? A. I did on that occasion, yes.

Q. You did on that occasion? A. Yes.

Q. And did it result with success? A. Not on that occasion.

Q. Not on that occasion? A. No.

Q. Now, when is the next occasion you talked about the acquiring of this property by the Port of New York Authority with Mr. Dudley? A. I cannot tell you. I do not know. It was over the telephone. I had several conversations with him over the telephone, but I cannot tell you the dates. I do not know.

Q. You do not remember the dates? A. No, I have no record of them.

Q. Do you remember what took place when you spoke to Mr. Dudley again about the acquiring of this property? A. Why, yes, but I do not know which occasion you have reference to. There are several of them, and several things happened.

Q. Tell us about all of the occasions. A. All right. On one occasion, Mr. Dudley called me up and told me that it was costing the Port Authority a great deal of money by reason of Miss Kunz's delay in fixing a price on this property; that the contractor, the contractors who were doing the preliminary work were unable to go on at all without having an electric power line constructed across this property and he told me that it was absolutely imperative that some arrangement be made whereby they could go on with the work while this matter was pending. That conversation resulted in my sending for Miss Kunz, and she came to my office. I took the matter up with her, and resulted in a permission which I dictated and which she signed which went to the Port Authority, and is now in evidence, which gave them a right whereby she consented that they might go on with this preliminary work in the construction of these lines, provided

that if the deal did not go through and they did not acquire the property, they would put the premises back in the same condition in which they found them, and pay her for whatever damage they had done. That was one occasion that Mr. Dudley and I discussed over the telephone.

Q. Yes. A. Another one that we discussed over the telephone was this proposition that is marked in evidence, with the blueprint, wherein the Port Authority made an offer of $80,000.00; they were to pay down $10,000.00, and Miss—asked Miss Kunz to give them permission to take immediate possession of the property. The $10,000.00 that they were to pay down was to be applied either on account of the purchase price that might be agreed upon between the parties, or upon an award in case they did not agree within thirty days from the date of that agreement. We talked that agreement over the telephone and came to a—I agreed to submit to Miss Kunz that proposition if they would put it in writing and send it to my office. That I discussed with Mr. Dudley.

Q. That is two occasions? A. I do not know how many more. There may be others that I do not recall right offhand, but I remember those two.

Q. Now, how long did each one of those conversations take? A. Oh, I do not know. I could not tell you that.

Q. Don't you remember, approximately, Mr. Westervelt? A. No. They were telephone conversations, so I cannot tell you how long they took.

Q. Five minutes? A. Well, certainly, the last one took a good deal more than five minutes.

Q. A half hour? A. Oh, I do not know long. I do not know how long.

Q. You do not remember? A. I couldn't tell you how long.

Q. Now, you said something about Mr. Dudley offered some money the second time you spoke to him for the acquiring of this property? A. Why, yes; they made—they made an offer of $80,000.00.

Q. That was the second occasion? A. No. I would not say it was the second occasion.

Q. Well, it was one of the occasions? A. It was at the time that this agreement that is now marked in evidence was made. It was the day—I think the day prior to the date of the execution of that, that Mr. Dudley and I discussed it.

Q. It was $80,000.00? A. Yes.

Q. And you took that up, that matter, with Mr Dudley? A. Mr. Dudley called me on the telephone.

Q. Yes. Well you discussed that—A. We did.

Q. —matter with him? A. Yes.

Q. The purchase price? A. That is right.

Q. You discussed that with him? A. Yes, that is right.

Q. And for what purpose? Why did you discuss purchase price with Mr. Dudley, about this property? A. Well, Mr. Dudley, for and on behalf of the Port Authority, made us an offer of $80,000.00.

Q. Made who an offer? A. Miss Kunz, through me.

Q. Yes. A. That is right.

Q. For the purchase of this property. And what did you say? A. I said I would submit it to Miss Kunz.

Q. And did you? A. I did.

Q. And then what happened? A. Well, Miss

Kunz did not want to decide right offhand whether she would take it or would not.

Q. You were interested at that time, then, in settling a definite price for the purchase of this property, weren't you? A. Exactly. And I advised her then that she had better take eighty thousand, because if she did not take it, I was afraid she would not get nearly so much.

Q. And you were interested in seeing that the Port of New York Authority gave her a good price for that property? A. Certainly.

Q. And you wanted to see her get it? A. That is right.

Q. And you tried to get the Port of New York Authority to give her a good price; that is right? A. That is right.

Q. And you were instrumental in having the Port of New York Authority give her a good price for that property? A. I think I have said that about five times now.

Q. Yes. Well, I want to make sure about it; that is all. A. Right.

Q. So you don't forget. Now, are there any other occasions or conferences you had with the Port of New York Authority about these premises? A. Oh yes, several.

Q. What else? A. Well, I do not know as I can give you in detail each one. They covered from the 21st—

Q. As near as you can, Mr. Westervelt. A. —day of June to the 2nd day of September, and almost every day I was either talking over the telephone to the Port Authority or the Public Service or Miss Kunz, and had one of them in the office.

Q. So far we have two occasions you spoke to

Mr. Dudley. Now, what else was done by you? A. I have testified several of them.

Q. What else? I have two occasions. What else did you do? A. Well, the contract was finally made on the 29th day of August. On that particular occasion, Mr. Ellis was with Miss Kunz in New York in the office of the Port Authority, and he called me on the telephone about eleven or half past of that morning, and told me over the—outlined to me over the telephone the terms of the agreement that they had practically come to. He wanted to know whether I thought it was all right to have that signed up in that form. I discussed with him two or three of the phases. Miss Kunz wanted to remain in the possession of the premises for some little time, this house occupied by her, and she also wanted the privilege of removing certain shrubs and trees that she had. The title was to pass on the 2nd of September, and she wanted to stay in the posession of the premises until sometime in October, and she also wanted the right to go on the premises to remove trees and shrubs, until the first of January. And we discussed how those privileges should be framed and how they should be put in the contract, and finally I approved the form that was finally signed.

Q. Yes. A. That was on the 31st of—

Q. That was over the telephone? A. That was on the 29th of August.

Q. That was over the telephone? A. That is correct.

Q. Do you recall how long that conversation was? A. No, I could not.

Q. You do? A. I could not tell you. Long enough, at least, to read over or explain to me the

contents of that contract which is, I think, three or four typewritten pages.

Q. Yes. Now, your office at that time was—A. Yes.

Q. When Mr. Ellis went to New York,—A. Yes.

Q. —You did not go to New York with Miss Kunz? A. No. I returned to my office on Saturday the 29th of August. The day this contract was signed was Monday, and when I came into my office there was a note on my desk. Mr. Ellis had left word that he had gone down with Miss Kunz. If I got in in time, to come down to New York. I immediately called up the Port Authority and told them that there was no need of my coming down; Mr. Ellis was perfectly all right to handle it, and to go on and negotiate the thing with him.

Q. Yes. A. And I did not go down to New York that day.

Q. And Mr. Ellis is employed by you? A. He did that for me, yes.

Q. Is he employed by you regularly? A. No.

Q. Did you pay him for that? A. I haven't paid him for that. I do not suppose he is going to render me any bill. We do those things for each other quite frequently.

Q. That was gratis? A. No. It is not gratis. I return the same kind of a favor for Mr. Ellis sometimes.

Q. Now, in your bill,—A. Yes.

Q. —are you charging Miss Kunz on that occasion for the services rendered? A. Certainly.

Q. Pardon? A. Certainly.

Q. As though they were done by you? A. Certainly.

Q. Now, what, in your estimation, were those

services worth, the time the contract was executed in New York? A. What, Mr. Ellis's services?

Q. Yes. A. Why, I do not know; I would not separate that at all. I think it is part of this whole transaction. I do not see how you can separate it.

Q. How much do you say they were worth? A. I do not know.

Q. Your bill is $4,000.00? A. Yes, yes.

Q. This was part of your services? A. That is right.

Q. Well, how much were these services worth? A. I do not know.

Q. You do not know? A. Not on that particular day, no.

Q. Well, this is part of the four-thousand-dollar-item? A. That is right.

Q. You valued theem at, when you made your bill,—A. Yes.

Q. —didn't you? A. Yes. I included the whole thing in one charge.

Q. How much is it worth then, if it is part of the $4,000.00? A. I wouldn't attempt to segregate it, because the service on that day was predicated entirely on two months' work prior to that time when—

Q. How much time did you put in in two months on this case? A. I do not know.

Q. You do not know that? A. I haven't figured the exact number of hours, if that is what you mean, no, I haven't.

Q. How many hours do you work a day? A. I have worked about eighteen hours some days; some days, not so long; lawyers don't belong to a union. We work until we get through.

Q. Well, can you tell us, approximately, Mr. Westervelt, how many hours you spent on this case? A. No, I cannot; I do not know.

Q. Can you tell us what was your charge for these conferences with Mr. Dudley on these two occasions? A. No, sir. I made no separate charge for any one conference.

Q. Did you add these different occasions up, the conferences, writing the letters, in making your four-thousand-dollar-bill? A. I went over what I had done with Miss Kunz, and told her I thought $4,000.00 was a reasonable charge, and she said she agreed with me.

Q. The whole thing? A. Yes.

Q. Now, she told you, also, that she did not care what you charged her; the more you got from the Port of New York Authority, the more you were going to get? A. No. She never said that.

Q. What was said, Mr. Westervelt? A. A lot of things were said.

Q. Well, I mean about she didn't care what you were going to charge her, on that occasion? A. On one occasion, she told me she didn't care what my bill was so long as I got it out of the Port Authority.

Q. I see. And you spent about two months on this case; is that correct? A. Well, from June 21st to the second day of September, I was busy with this case in one phase or the other, and I think most every day in that length of time.

Q. You have a large practice beside this case, also, haven't you? A. Oh yes.

Q. You are always busy? A. Well,—

Q. Isn't that right? A. Mostly busy.

Q. You have many more cases in your office? A. A few.

Q. Well, a few or many? A. Enough to keep me busy all the time.

Q. Yes. You were not occupied every day for two months with this case? A. Not the whole of every day, no.

Q. Well, what part of the day were you occupied with this case for two months? A. I cannot answer that.

Q. You cannot answer that neither, can you? A. It did not run uniform, no. Sometimes it was a half a day; sometimes a few minutes; sometimes a half an hour or two; I cannot answer it.

Q. Now, this bill was submitted by you to Miss Kunz about what date? A. On the 31st day of August.

Q. The 31st day of August? A. That is right. I think it was the 31st. It was the Wednesday preceding the 2nd of September, anyway, and I think that is the 31st of August, if I am not mistaken.

Q. Now, after it wasn't paid, did you get in touch with Miss Kunz? A. After it wasn't paid.

Q. When did you expect to get paid? A. The day of closing, on the 2nd day of September.

Q. And then it wasn't paid? A. No.

Q. Then what did you do? A. Well, I waited for—I waited all the next week, because Miss Kunz at the date of closing told me she would see me the first of the following week. She did not come in.

Q. And then what did you do? A. Then—well, at the time of closing, Mr. Dudley, I think, or Mr. Horowitz, I am not sure which of the attorneys, raised the question of a small shack that was on the property and accupied by some tenants of Miss Kunz who rented it for the summer months. They wanted to know whether we had done anything to get rid of those tenants, and I told them

at that time that I had prepared notices for Miss Kunz to serve on these parties, and that she had them, and she said she had not had an opportunity then to serve them, but that she would do so. So that, after the closing the following week, I cannot tell you the exact day of that week, the Port Authority called me up on the telephone to ask me if I knew what had been done in regard to those tenants, because they were about to do some blasting in the neighborhood of this little building, and they were afraid some damages might result. They wanted me to—I told them I did not know, because I had not heard from Miss Kunz since the day of the closing. They wanted to know if I would call Miss Kunz on the wire. I told them I could not do so because she had no telephone, but that if they would get in touch with their field office which was within a few hundred feet of Miss Kunz's residence, and have their—one of their men go and ask her to call me on the telephone, I would ascertain the fact and immediately report to them, so they—

Q. Well, what did you do about the fee, Mr. Westervelt? A. Well, I want to tell you what I did about it. Miss Kunz did not come to the telephone, but she did write me a note sending back these notices, and in that letter stated that she no longer had any interest in the property; she did not know why I called her up on the telephone anyway, and she was through with it. I replied to the letter, explaining that I had—the reason for my call, and that I had not called her, and asked her—reminded her that she had not been to my office as she agreed, and told her that on the following Thursday, and Tuesday and Wednesday of the following week, I would be in my office and would

like to see her. I never received any reply to the letter. So, the following Thursday, I went over to Miss Kunz's house. I did not see Miss Kunz. I waited there for some little time, but did not see her; left my card on the door stating that I would be back on Saturday morning. The following morning, before ten o'clock, Saturday morning, about half past nine or quarter of ten, I reached Miss Kunz's residence. Miss Kunz and some party were just leaving the house. She asked me what I wanted to see her about. I told her I wanted to see her on two matters; one was the tenant, and the other was about my bill. And Miss Kunz told me that she was not going to pay that bill.

Q. Where did this conversation take place? A. In her back yard.

Q. Her back yard? A. I asked her to come over to the office and let us discuss the bill, and she said that she would not come over to the office, she would not have anything to do with the bill. I told her then I had no remedy but to issue a summons, and I came back to my office and did so.

Q. Did you ask her why she would not pay the bill? A. I did.

Q. What did she say? A. She said she did not care to discuss it.

Q. She did not care to discuss it? A. That is right.

Q. How long have you been her attorney? A. Oh, I do not know. I guess the first matter I had for her was five or six years ago.

Q. Yes. A. That was an arrest for the violation of a health ordinance case.

Mr. Friedman—I ask that that be stricken out on the ground it is not responsive.

The Court—Strike it out.

Q. I did not ask you for that, did I, Mr. Westervelt? A. No.

The Court—Now, it is out. Proceed with another one.

Q. Now Mr. Westervelt, you have submitted fees to her for services before? A. Yes.

Q. She paid you? A. Yes.

Q. No trouble about fees before? A. No.

Q. This time?

The Court—We won't go into that.

Mr. Friedman—Pardon?

The Court—We won't go into that.

Mr. Friedman—All right, sir.

Q. But she flatly told you that day in her back yard that she refused to discuss your fees for services? A. That is right.

Q. And then you walked out? A. Yes.

Q. And started suit? A. That is right.

Q. Now, the bill of particulars which is attached to the complaint, that is based on a contract, is it? Is that based on a contract for services? A. No. It is not based on a contract.

Q. Well, you say she promised to pay you $4,000.00? A. I say she agreed to, yes; that is right.

Q. Yes. Now, in the bill of particulars attached to the complaint, it say, "Professional serices in the matter of the acquiring of real estate of the defendant by the Port of New York Authority, conferences, correspondence, preparation of

contracts, approval of proposed options, preparation of notices to quit premises, preparation of deed, and the closing of title to the said premises." Is this bill of particulars based on a contract for the $4,000.00? A. That is based on the services rendered.

Q. Yes. On a contract for $4,000.00? A. No. It is not based on a contract.

Q. Well, she agreed to pay you $4,000.00 for the services rendered? A. That is right.

Q. That is correct? A. Yes.

Q. And this bill of particulars is based on those services? A. It is based on services; it is a statement of those services.

Q. Yes. A. Yes, that is right.

Q. For which the suit of $4,000.00 is being brought? A. That is right.

Q. And your services in this case were in and about the sale of the property belonging to Miss Kunz?

The oCurt—Mr. Friedman, haven't we been over that enough?

Mr. Friedman—I just want to get this question answered.

The Court—No; we won't go into that any more.

Mr. Friedman—Just this one question.

The Court—No. No more on that.

Mr. Friedman—All right, sir. Now, I think that is about all.

The Court—That is all.

Redirect Examination by Mr. Zabriskie:

Q. I just have one or two questions. You were

asked a question about whether or not you were anxious to make this sale so as to avoid condemnation, Mr. Westervelt. Were you afraid of the condemnation proceedings? A. No; but I thought by a contract we probably would get a better price than we could on condemnation.

Q. If it had been condemnation proceedings, who would have been the one that conducted them on behalf of Miss Kunz? A. I would, I suppose.

Q. And that would have been more business? A. Certainly.

Q. You said that on one occasion when you were discussing fees, she said she did not care how much you got as long as you got it out of the Port Authority? A. That is right.

Q. Did you make any response to that? A. Yes. And I told her no matter what the result of this was, I could not get anything from the Port Authority; she would have to pay the bill whatever it was.

Q. Now, counsel asked you some questions about what transpired after this matter was closed, and you referred to a note written to you by Miss Kunz. And I show you a paper signed C. Kunz, or C. I. Kunz, and it is dated 9|7|27; is that the note to which you refer? A. (Referring) That is the one.

Mr. Zabriskie—Is there any objection to putting this in evidence?

Mr. Friedman—No objection, sir.

(Paper marked Exhibit P-24 in evidence.)

Q. And then, in response to that note—or, you referred to another letter that you had written on

September the 9th, and I think we served a notice to produce that letter.

Mr. Friedman—What was that, sir?

Mr. Zabriskie—And I will offer that.

Mr. Friedman — I won't object to it.

(Paper produced.)

Q. Is that the letter to which you referred in the latter part of your testimony as being the letter which you had written to her? A. (Referring) Yes. That is the one.

Mr. Zabriskie—And then, if that will be marked, I will read it to the jury.

(Paper marked Exhibit P-25 in evidence.)

Mr. Zabriskie — (Reading Exhibits P-24 and P-25 to the jury.)

I think that is all.

The Court—That is all.

JOHN STEWART DUDLEY, sworn as a witness on behalf of the plaintiff, testified as follows:

Direct Examination by Mr. Zabriskie:

Q. Mr. Dudley, you are connected with the Port Authority? A. I am, sir.

Q. And during June and July and August and September, 1927, were you connected with the Port Authority? A. I was, sir.

Q. In what capacity? A. Head of the legal department and—

Q. And you are a member of the bar of what state? A. The State of New York, sir.

Q. The State of New York. And you are here

testifying, you come over here voluntarily to testify at the request of Mr. Westervelt? A. We came voluntarily because we wanted to be at the service of the court and of either counsel, and bring our papers accordingly.

Q. Now then, did you have any negotiations with Mr. Westervelt in this matter, Mr. Dudley? A. Yes, sir.

Q. Can you briefly outline to the jury what they were without going into too much detail?

Mr. Friedman—I did not get that question.

(Two previous questions read.)

A. The chief executive officer of the Port Authority, Mr. Ramsay, who was in charge of the executive management of the Port Authority, in the first part of June, 1927, showed me a letter from Mr. Westervelt, which has been referred to, and in which he claimed that we had made entries on her property. He said that we should not make such entries unless we made some definite proposition to acquire the property. Mr. Ramsay suggested that, inasmuch as Mr. Westervelt was a lawyer and that I was a lawyer, that I should deal with him. That is our custom when lawyers appear in these matters, that we should deal exclusively with the lawyers. Accordingly, with Mr. Lanterman, who is a real estate agent of the Port of New York Authority, and in charge of the acquisition of the property, we went, on an appointment, to Mr. Westervelt's office in Hackensack, and there had a discussion with him. We denied in the first place that we had no negotiations with Miss Kunz up to that time in reference to her property,

saying that we had had such negotiations, that she had given us permission to enter on the property to string a line of wires across, and that we had used that because it was necessary; and we told him definitely that we would acquire the property either by purchase or condemnation; and we likewise told him that it was necessary for us to acquire the property promptly, either one way or the other, and that we wished to be in every way fair to Miss Kunz; but we were building a large project and we could not afford to lose much time about it. He had some conversation with Mr. Lanterman about the price, and I think Mr. Lanterman made him an offer, which he said he would submit to Miss Kunz, and we thereupon left, expecting to hear from him. We did not hear for sometime, and the work became more and more pressing, and it was more and more necessary for us to go into the property to carry on our work; and I had some other conversations, and I think Mr. Lanterman did, with Mr. Westervelt, asking for some kind of an issue on price, so that we could do one thing or the other and get started. And, as nearly as I can remember, his answer to these things was that he wanted a definite offer in writing, and I think a definite offer was made on a letter that I helped prepare, and was prepared by the chief executive officer, and which I think is in evidence. We got no immediate response to that, and I think sometime along in July, perhaps even in August, I had a telephone conversation with him, the upshot of which was that I agreed that I would draft an agreement in which we would pay on account a certain amount on this property. If the property were condemned, it was to apply on the award; if we later succeeded in the negotiations, it was to apply on account of the purchase price. Meanwhile, we were to have possession. Possession was a thing that was very necessary at that time. He made certain suggestions and said if I sent the paper over, he would go over it and take it up with his client. I think Mr. Lanterman took it over in person, with the check which he had to make the down payment on account of this contract as provided by its terms. I think Mr. Lanterman came back with some modifications that Mr. Westervelt had suggested, which I read over. I do not remember that I found any particular fault with them, and agreed. We continued to press Mr. Westervelt for some kind of a definite answer about the thing one way or the other, until we were finally informed that he had gone away on his vacation, and Mr. Ellis was in charge. I cannot tell you directly just how Mr. Ellis happened to come to the office with Miss Kunz, but on the 29th of August, we had a conference in the office of Mr. Ramsay at which I was present, which lasted most of the morning, and resulted in our agreeing—an agreement that the property was to be sold for $84,000.00. I drew a first draft of an agreement after discussing the terms with Mr. Ellis, and he called up Mr. Westervelt, and we made some changes in it; and sometime that day the contract was signed. We, following that, had some discussions with Mr. Westervelt's office about how the closing should be managed, and on the 2nd of September, we had a closing in my office; the deed was passed, and the matter closed up. Following that, we had some discussion about getting the tenants off.

Q. May I interrupt a minute. Is that a copy of the agreement to which you refer?

Mr. Zabriskie—I understand you waive the production of the original?

Mr. Friedman—Yes.

A. I have the original of that, perhaps.

Q. Well, if you want to leave it here; it doesn't make any difference. A. Yes. It bears my initials.

Q. Suppose you bring it. If you have the original contract and deed, why, then the jury can see the original papers. That will probable be still better. A. (Papers produced.) Here is the deed, sir; and here is one copy of the contract of sale.

Q. And that is a contract to which you have just been referring in your testimony, is it? A. Well, I referred to two. We signed a contract of consent, and we also submitted this proposed agreement which was not completed. I regret to say I have not the original of that.

Q. Well, is this one of the papers that was prepared to which you have referred? That is, Exhibit P-17? A. Yes. This is the paper that I prepared following the telephone conversation with Mr. Ellis, in which we agreed to make a down payment, as I outlined, with the additional clause that Mr. Ellis himself drew, which he appended at a later time.

Q. I see. And I will offer now the contract of sale. This contract of sale was actually drawn by whom? A. I drew the first draft, and Mr. Ellis made some changes, which we incorporated.

Q. So it was discussed and modified? A. Discussed before we started to draw it. I dictated it originally to the stenographer.

(Marked Exhibit P-26 in evidence.)

Mr. Zabriskie—And the deed I will offer.

Mr. Friedman—No objection.

Q. In your negotiations, Mr. Dudley, in connection with this matter, did you treat with anybody else other than Mr. Ellis and Mr. Westervelt? A. No, sir.

Mr. Zabriskie—Cross examine.

Cross Examination by Mr. Friedman:

Q. This is Mr. Dudley? A. Yes, sir.

Q. Mr. Dudley, you say Mr. Ellis made some corrections in the contract? A. He did not make corrections. He made suggestions that he wanted put in, to which I agreed, and were later incorporated.

Q. And Mr. Ellis was representing Mr. Westervelt, attorney for Miss Kunz, at the time? A. We so understood, yes.

Q. Yes. And do you recall how many conversations you had with Mr. Westervelt about the purchase of this property by the Port of New York Authority? A. I cannot say the exact number. They extended over several months.

Q. Over several months. A. Well, they extended from sometime in the early part of June until probably the middle of September.

Q. Do you recall how many conversations or conferences there were approximately in all? A. I cannot say approximately. They occurred every few days, because we were anxious to get the work started. It was a matter of importance to us.

Q. Can you say approximately how long each

conference took place? A. I cannot give you a general statement, because they varied. Sometimes they lasted half a day; sometimes they lasted ten minutes.

Q. Sometimes a half a day and sometimes ten minutes? A. Yes, sir.

Q. And you and Mr. Lanterman and Mr. Westervelt were at these conferences? A. Mr. Lanterman was not always present. Sometimes he was. Sometimes they were over the telephone.

Q. You and Mr. Westervelt had these conferences? A. Mr. Lanterman took an active part in the conference when he was present.

Q. Yes. But they were between either Mr. Westervelt, you and Mr. Lanterman, or between you and Mr. Westervelt, the two or three of you? A. There were also conferences, as I have stated, with the chief executive officer of the Port Authority. At the closing, there were other persons present.

Q. And you were there representing the Port of New York Authority? A. Yes, sir.

Q. And these conferences were about the purchase price of the property? A. Well, they concerned all the matters that I have discussed.

Q. Yes. And part of those matters was the purchase price of this property? A. Naturally.

Q. Yes. And the other terms, about the moving out on a certain day? A. Yes.

Q. And about the shanty? A. Yes.

Q. With the house on the premises? A. Yes.

Q. And Mr. Westervelt was there negotiating for the sale and the purchase of this property with you or with Mr. Lanterman or with Mr. Ramsay? A. He was there representing Miss Kunz.

Q. Yes. And that was about—he was negotiating about the purchase and selling of this property? A. He talked about the price, necessarily.

Q. Well, it was about the sale and the purchase, wasn't it, Mr. Dudley? A. He came over to get the matter disposed of.

Q. Now, was it or was it not about the sale and the purchase of this property? A. That, with other things.

Q. Yes.

Mr. Friedman—That is all.

The Court—That is all.

Redirect Examination by Mr. Zabriskie:

Q. I just want to ask one question more. At that last time when Mr. Ellis came over, by whom was he accompanied? A. He was accompanied by Miss Kunz.

Q. Miss Kunz was there herself. Did she participate in the discussion, or did she leave that to Mr. Ellis? A. She talked, but I think we directed most of our questions and answers to Mr. Ellis as her spokesman.

Recross Examination by Mr. Friedman:

Q. But you never spoke to her? A. Miss Kunz?

Q. At these conferences? A. I do not recall whether I did or not. They were quite lengthy, and a good deal of discussion.

Q. I understood you to say before that you and Mr. Westervelt and Mr. Lanterman or Mr. Ramsay conducted these—

The Court—Just a minute. You misun-

derstood the question. The question was, the last conference, with whom did Mr. Ellis go and come at this place?

Mr. Friedman—Oh, I beg your pardon. That is all, Mr. Dudley.

May I ask just a few more, just one or two more questions?

By Mr. Friedman:

Q. Were you subpoenaed to court here? A. Yes, sir.

The Court—Just a minute. He has testified that he came here voluntarily.

Q. And are you being paid for your services here today? A. I am not.

Mr. Friedman—That is all, sir.

THOMAS R. CLENDINEN, sworn as a witness on behalf of the plaintiff, testified as follows:

Direct Examination by Mr. Zabriskie:

Q. Where do you live, Mr. Clendinen? A. Englewood Cliffs, New Jersey.

Q. And what is your business? A. Real estate and mortgage loans.

Q. And how long have you been engaged in that line of business? A. Well, I have been in the—well, over five years, anyhow.

Q. And you have been connected with real estate— A. Real estate for the last 20 years.

Q. —for the last 20 years? A. Yes.

Q. Do you know Miss Kunz? A. Quite well.

Q. And do you know where her property is? A. Very well.

Q. And that is how far, about, from— A. My place?

Q. —your place? A. One mile.

Q. Now, did she ever ask you, in company with others, to make an appraisement of her property? A. She did, indirectly, through another broker.

Q. I see. And was there an appraisement of the property made in pursuance to her request? A. Yes, sir.

Q. Who were the other brokers? A. Mr. Young and Mr. John Borg and myself.

Q. Yes. And was that made between June the 21st, 1927, and September 2nd, 1927? A. I believe it was.

Q. And did you three men arrive at a figure which would be a fair figure? A. We did.

Q. And did you make a report of it in writing? A. We did.

Q. And to whom was the writing given, do you know? A. Mrs. Kunz.

Q. And what was the figure?

Mr. Friedman—One moment. I object on the ground that this is not proper. This is a suit for services, legal services; the valuation of a property is not relevant or material. I think it is too remote.

The Court—Except that Mr. Westervelt said that in making up his bill, he included services rendered, and the value of the property.

Mr. Friedman—Yes, sir; he also testified

that the defendant agreed to pay him $4,000.00.

The Court—That was afterwards; but we are now testifying on this quantum meruit count.

Mr. Friedman—Well, he said that the contract was executed, and before the deed was delivered, which would be about the 29th of August; that being so, I do not see how the value of the property can in any way affect the quantum meruit count.

The Court—I will allow it.

Mr. Friedman—Exception.

Mr. Friedman—I just want to object for the purpose of the record as to the report made by the other two appraisers on the ground that there is no expert testimony here, there is no testimony here that the other appraisers have complied with the expert testimony rule as to the valuation of this property.

The Court—Well, we were interested in that as a primary question; but I think we are now permitting it as perhaps bearing on the course of conduct of Miss Kunz.

Mr. Friedman—I did not get your Honor's ruling.

The Court—I say, if that were the primary question here, we would probably go into the qualifications, but Miss Kunz selected this man as a man to make the appraisal.

Mr. Friedman—Yes, sir.

The Court—Now, it is a poor time now, when he comes to the witness stand, although she had faith in him and confidence in his fitness, to question it now.

Mr. Friedman—I say they still have to comply with the rule.

The Court—What rule?

Mr. Friedman—That the other experts have appraised buildings around the property belonging to the defendant.

The Court—No. This man is going to testify as to his own appraisal.

Mr. Friedman—I take an exception, anyway.

A. Seventy-five thousand.

Q. You say seventy-five thousand? A. $75,000.

Mr. Zabriskie—Cross-examine.

Cross Examination by Mr. Friedman:

Q. And you would say eighty-four thousand was a good price? A. I would say eighty-four thousand was a very good price.

Q. And at the time you appraised this property, that was before the bridge boom was around Bergen County, wasn't it? A. Oh no, no. It was just at the time. I do not know whether I am allowed to go into it, how I became an appraiser, but Mr. Young, an appraiser, called me up—

Mr. Friedman—I object to that.

The Court—You cannot go into that. Just answer the question..

The Witness—Yes, sir. Oh, no. It was at that time that there was trouble about the price of this piece of property there.

Q. There was trouble about the price? A. Well,

we know—we knew, and everyone over there knows, that that piece of property there was in the bridge way, and—

Q. Now, will you please answer my question? I asked you whether or not at the time you appraised this property here that was before the bridge excitement? A. Oh no.

By the Court:

Q. When did you make that appraisal? A. Why, I cannot give you—I think it was in June or July that the appraisal, there, that I gave to Mrs. Kunz.

Q. You say you think it was in June or July of last year? A. Yes, sir.

The Court—(To Counsel) And you ask now whether it was before the bridge excitement?

Mr. Friedman—Yes, sir. I do not know much about the Bergen County bridge.

By Mr. Friedman:

Q. Well, Mr. Clendinen, would you say that $84,000.00 was too much to be paid for this property? A. At that—at that time, when Mrs. Kunz came to the house, I told her—

Q. Now, will you please answer my question I asked you? A. I think—Yes. That is why I said seventy-five thousand.

Q. Eighty-four thousand was too much money? A. At that time.

Q. Yes. And the Port of New York Authority paid too much money for this property at the time they purchased it, is that right? A. Well, that is—

Q. Is that right? A. That is a matter of opinion.

Q. And, in your opinion— A. In my opinion.

Q. Is that right, in your opinion? A. In my opinion, yes.

Mr. Friedman—That is all.

The Court—That is all.

Mr. Zabriskie — Mrs. Whitford prepared the bill for $4,000.00 on the 31st of August, 1927, and saw it handed to Miss Kunz in Mr. Westervelt's office.

Mr. Friedman—I do not admit that it was itemized; I do not admit that.

Mr. Zabriskie—I did not say it was itemized. That is all.

The Court—Do you rest, Judge?

Mr. Zabriskie—Mr. Ellis.

The Court—I do not think we need that. It will be simply cumulative as to what has been said.

Mr. Zabriskie—Of course, that, really, is so, excepting there is one point I think is quite important. I will try to make it very short.

The Court—All right.

WILLIAM E. ELLIS, sworn as a witness on behalf of the plaintiff, testified as follows:

Direct Examination by Mr. Zabriskie:

Q. Mr. Ellis, you are a member of the bar? A. Yes, sir.

Q. And you are the Mr. Ellis who accompanied

Miss Kunz at the time the deed was delivered? A. No.

Q. Or, at least, the contract was prepared? A. I met her there, on the Monday before the deed was delivered..

Q. Yes. A. I met Miss Kunz at the Port Authority office, 75 or 90 West Street, 75, I think it was.

Q. And did you conduct the negotiations? A. Yes.

Q. Did you mention figures to her? A. She mentioned figures to me at first.

Q. Yes. And when you got around to the figure of $80,000.00, what conversation, if any, was there that you can recall? A. Well, I cannot say just when we got around to the figure of eighty thousand. I would have to start in by saying that when we went there, we had the letter, and I so notified them, about their withdrawal of their offer of—

Q. They had withdrawn an offer? A. A previous offer, and made a flat offer of sixty-eight thousand five hundred; unless that was accepted by a certain day—I think the letter is in evidence—

Q. Yes. A. —that they would commence condemnation proceedings, and they notified — Mr. Ramsay said they had already notified Mr. Lloyd, who had taken care of the matter, when necessary, to proceed with the condemnation; and we finally talked about the matter quite some time, and during the time, why, Miss Kunz and I went in an outer room and talked matters over; and finally, during the course of the meeting, I raised their figure to $82,000.00. And then Miss Kunz wanted to know if she could see me. So we went out in the outer room and talked the matter over, and she

told me at that time—she said, "Well, you have got them up to eighty thousand now, I am satisfied," she says, "you can close it if you want to." "Well," I said, "of course, it is up to you, whatever you say." "Well," she says, "what do you think?" "Well," I says, "I might be able to get them up to eighty-five thousand." At that time we were asking ninety-five thousand. And I suggested to her that we drop our figure from ninety-five thousand to ninety-thousand, and as I thought by doing that, we might be able to split the difference between eighty ninety and get eighty-five. "Well," she says, "use your own judgment." "But," she says, "you have got them up to the eighty thousand; I am satisfied; so do as you like; do as you think best." "Well," I says, "it is up to you; you are the one to be satisfied." "Well," she says, "go on, get all you can." So we went back and continued the meeting, and I finally raised them to eighty-four thousand; I was trying to get the eighty-five, and they flatly said they would not go above the eighty-four, and I said, "Well, I do not know whether Miss Kunz will accept that or not. I will have to talk to her now." And I asked her in the presence of all of them, and she said she was satisfied, and we closed at $84,000.00.

Mr. Zabriskie—Cross-examine.

Cross Examination by Mr. Friedman:

Q. You were there representing Mr. Westervelt? A. I was taking care of the matter for Mr. Westervelt because he was on his vacation.

Q. Yes. A. Or, that is, he had been off, and I had previously made this appointment with Mr. Ramsay at Miss Kunz's request.

Q. And you said you finally closed at eighty-four thousand? A. I said we finally agreed — she agreed to take the eighty-four thousand.

Q. Yes. A. And the matter was closed, and after which we talked over the terms of the contract, and the terms of her occupying the house. I think she wanted to stay there as long as she possibly could.

Q. And you helped her get that eighty-four thousand? A. I was representing her, yes.

Q. Well, I say, you helped her get eighty-four thousand? A. I was helping her get all she could.

Q. Yes. You did not care how much you got from the Port of New York Authority as long as you got enough for your client; that is right, isn't it? A. The only thing I cared about was her. I was representing her, and she said that she wanted a hundred thousand.

Q. Yes. A. That was the figure I started out with, and taking her own figure.

Q. And through your agency, the matter was closed for $84,000.00, is that right? A. I would not say through my agency.

Q. Through your instrumentality? A. No.

Q. Through your efforts? A. No. That wasn't closed at eighty-four thousand through my efforts.

Q. You turned down $80,000.00? A. Why, in other words, we kept them agoing.

Q. Pardon? A. Going up.

Q. What is that? A. I say, in other words, we kept them going up, kept them agoing.

Q. Yes. You turned down $80,000.00? A. I did not turn it down.

Q. It was not enough. Well, didn't you advise Miss Kunz that you were going to try to get more

for her? A. When Miss Kunz went out with me in the outer room, she said she was satisfied, then, that she — I had them over the eighty thousand.

Q. Yes. And then, did you— A. And I told her I thought we might possibly be able to get some more.

Q. And when you said you might get some more, you meant you might get some more from the Port of New York Authority? A. No, I meant her; I wasn't getting anything.

Q. She was satisfied with eighty, wasn't she? A. She wanted me to get all she could for her.

Q. Yes. A. That is what she wanted.

Q. Yes. Well, she told you she was satisfied with $80,000.00? A. She said she was satisfied. I had it over the eighty thousand,—

Q. Well, — A. — and I told her I thought we might get some more.

Q. Well, you meant that you might get some more for her?

The Court—Just a minute.

Mr. Friedman—This is very important, your Honor.

The Court—It is not very important at all. He has testified—why go into that—he wasn't getting it for himself; he was representing this woman. Now, everybody knows that.

Mr. Friedman—All right, sir. That is all.

Mr. Zabriskie—That is the plaintiff's case, your Honor.

(The Plaintiff rests.)

MOTION FOR NONSUIT

Mr. Friedman—Your Honor please, I am going to make a motion for a nonsuit on the ground that, first, the complaint alleges a quantum meruit count, and in the same count they are asking for $4,000.00 on a contract, agreed promise to pay $4,000.00. Then they go ahead and allege that the reasonable value of said service is the sum of $4,000.00.

The Court—Where is the express contract pleaded here?

Mr. Friedman—The express contract?

The Court—Yes.

Mr. Friedman—It came out in the proof that she agreed to pay him $4,000.00. That is a different cause of action than they allege in the complaint.

Secondly, under the case of Stout vs. Humphrey these contracts made by lawyers for services in and about the sale of real property have been held to be within the tenth section of the statute of frauds, and I want to read to your Honor some pertinent parts of this opinion. In this case, the following was a bill of particulars of the demand, whereupon the annexed declaration was founded. It said, "For legal advice and services, traveling expenses and disbursements done, performed and expended by plaintiff as attorney for defendant in and about the sale of the property of the defendant known as the Union Hotel, situated in the Village of Flemington, County of Hunterdon, State of New Jersey, $1,200.00; paid on account, $25.00, and the balance of $1,175.00."

The Court held in this case as follows: "But,

as I read the statute, both in its letter and manifest policy, it is aimed at any person who acts as broker or real estate agent in the very transaction in question out of which the claim to compensation arises. It would be a very narrow construction of the statute to say that it applied only to him who ostensibly and usually carried on the business of brokerage or a real estate business so-called."

And then, if we go on, "But conceding that the attorney does not cease to be such when his employment is a service not strictly professional, and, as in this case, was that of a broker or real estate agent, the mere fact that he is an attorney will not relieve him from the provisions of the statute which require the written authority of the owner for the sale or exchange of land before he will be entitled to any commissions for such sale or exchange."

Then, they go on further, and the Court says: "That would be, indeed, but a narrow construction of the terms 'selling or exchanging,' and exclude all who negotiate sales, seek purchasers and secure them, as is customary with real estate agents and brokers, and for which services commissions are always charged and allowed. I concur with the views of the trial judge that 'a construction which would take out of the statute all persons except those who are empowered to sell, in the sense of carrying the sale into effect, would defeat the purpose of the statute!'"

The Court—I am very familiar with that case, Mr. Friedman.

Mr. Friedman—I just want to read one more short paragraph.

The Court—No. Let me point out something to you. If I remember the practice act, it implies if there be a defense of illegality, statute of frauds, or any other matter likely to cause surprise, it is no defense unless it is pleaded. Now, you have generally denied this. You have not raised the statute of frauds in your answer.

Mr. Friedman—I have a case, your Honor please, that says where the answer denies all the allegations of the complaint, why, then I can raise the statute of frauds without pleading it. I cite Lozier vs. Hill, 68 Equity, 300. They held there, if your answer denies—

The Court—Equity?

Mr. Friedman—They held both at law; they say if your answer denies the complaint, you can raise the statute of frauds.

The Court—Why do you suppose they included each as part of the practice act if they did not intend that if you raise those special defenses you had to plead them?

Mr. Friedman—Well, I do not know why, but I have some more cases on that point where they allowed you to plead the statute without having it in the pleadings.

The Court—Well, aside from that, the Stout case has not any application; I mean, the facts in this case show a distinction.

Mr. Friedman—Yes, sir, your Honor. I just want to raise one more little point to your Honor, as far as the professional services are concerned with the unprofessional services.

"The trial judge properly held that so far as those services, they being of a character not obnoxious to the statute of frauds, were joined together in an indivisible contract with services that were obnoxious to the statute, the whole contract would be void; that there could be no recovery under the bill of particulars in the case, for the bill of particulars is inconsistent with a recovery on the quantum meruit. The bill of particulars being based on the contract, in the absence of an amendment, there could be no recovery."

Now, I asked Mr. Westervelt on the stand whether the bill of particulars was based upon the contract for which he seeks $4,000.00, and he said yes. Now, the bill of particulars being inconsistent with the quantum meruit count, if one part of it is obnoxious to the statute, then the whole thing must fall because it is void.

The Court—Is that all?

Mr. Friedman—Yes, sir.

The Court—Motion denied.

Mr. Friedman—Your Honor will permit an exception.

CHARGE.

Caffrey, J. Ladies and Gentlemen of the Jury, this action is by Mr. Westervelt, a member of the Bergen Bar, against Miss Christine Kunz for services rendered on her behalf, claimed to have been rendered by Mr. Westervelt as her attorney. He is suing for the value of his services, and he has particularized his services relating to the acquiring of real estate of the defendant by the Port Authority of New York, conferences, correspondence, preparation of contracts, approval of proposed options, preparation of notices to quit, preparation of deed and closing of title. You have heard the tes-

timony of Mr. Westervelt as to what he had done, and you also heard the testimony of what Mr. Ellis had done, who, from the testimony of Mr. Westervelt, acted for him. So, if you conclude that Mr. Ellis was acting for Mr. Westervelt, of course, Mr. Westervelt may properly charge for services rendered to Miss Kunz if they were rendered by Mr. Ellis on his behalf.

On the other hand, Miss Kunz denies the general employment claimed for by Mr. Westervelt, and says that he had no authority to do many of the matters for which he now claims. I think she admits having him write some letters.

Of course, in order to establish liability on a contract, it is not absolutely necessary that there be a written contract, and we may imply an obligation to pay from services rendered if there be authority, and sometimes we have to determine authority not altogether by express agreement in the first instance, but by what has been done and the attitude of the parties toward the work that has been done. You have evidence in this case as to the actions of Mr. Westervelt, and then you have evidence, too, of a continuity of events which relate to what had been done prior. Under the law, if a person accepts benefits, knowingly accepts benefits, the law raises an obligation to pay for them. Again, too, if work is done and knowledge of that work comes to a party who is to be charged with it, and they ratify with knowledge of what has been done, the ratification takes the place of what ordinarily would come from an express agreement. So, here, you have evidence of a series of actions beginning sometime in June and culminating in the month of September when the title was

passed. Mr. Westervelt is not suing for commissions as a broker. There is no claim by Mr. Westervelt that he was acting as a real estate broker; his claim is for professional services as a lawyer. If the property were sold, and you find that he performed legal work as a lawyer in connection with that, of course, he is to be paid despite the fact that the property was sold; in other words, if a sale had taken place, and he did work in connection with it, the fact that he was not a broker and the fact that he is not suing for broker's commissions would not deprive him of just compensation for services that he rendered as a lawyer.

It would serve no useful purpose on my part to go over the testimony. This case has taken more time to try than it ought to; but the Court gave considerable latitude to counsel in order that the picture might be fully presented to you. Mr. Westervelt has testified that he has been practicing law for twenty-one years; that he was engaged by this lady to act for her. Whether or not he had authority to do what he did, of course, there is a dispute due to her testimony, and you sitting as jurors must decide that question. Did Mr. Westervelt have authority to act for her? Secondly, if he did, to what extent? Was it to the extent claimed by Miss Kunz, that is, with relation to the writing of the letters, or can you say from all of the evidence that he was authorized to do everything that he claimed to have done? And then the next question is, what should be the measure of his compensation? A man in professional life places his charges not necessarily upon the momentary act. You cannot very well say that a lawyer is to be paid on the basis of five minutes' work, and then say that he is

entitled to so much per minute; nor can a surgeon or a physician, or can you say, in the case of a pharmacist who compounds preparations, because the ingredients cost a few cents, that that should be the basis of the return. There is an element of knowledge. A man might be able to decide something as a lawyer in five minutes, but perhaps research and study of years before that had produced the mental state that would make the problem easy for him; and the same thing applies to a physician, and the same thing applies to a druggist. Therefore, in considering the value of professional services, we have a right to consider the nature of the service.

The law has said that, in a case such as this, you sitting as jurors, taking the evidence, must decide this case. You have heard the evidence of Mr. Hart, Mr. Wright, Mr. Mabie, who have testified as to the reasonableness of the plaintiff's charges. It being a fact question, you, the law has said, must decide, and according to your best judgment, what the outcome of this case should be. Is Mr. Westervelt entitled to anything? If he is, what amount? He claims $4,000.00.

In addition to his evidence as to what he had done, there is evidence in the case that after the transaction had been completed he spoke to Miss Kunz, and they fixed the fee at $4,000.00. He is not suing under an express contract. In other words, you cannot say that what was done after forms the basis of compensation. He is to be paid for what he had done under the implied agreement, if you find that to be so. Then we have evidence which might go to the reasonableness of the charges, because he said Miss Kunz agreed to pay

him $4,000.00. I think he said that she said she would pay him $1,000.00, and then $1,000.00 at different intervals after that. Then you heard his testimony with reference to the reasons why she did not want to break up any of this money, I think she said for sentimental reasons. On the other hand, you have Miss Kunz's denial as to this transaction; as a matter of fact, she said there was no conversation relating to payment at all. I think she said that she had no conversation, or even with regard to paying Mr. Ellis. We cannot decide this case altogether upon one item. Mr. Westervelt has enumerated, both in the exhibit offered by the defendant and his own testimony, which has somewhat elaborated on the written memo, the services for which he claims. Whether or not they are reasonable is a question for you. We might say, too, that you sitting as jurors have the privilege of deciding the weight of evidence. In arriving at the value of testimony you have the privilege of drawing inferences from your observations, and you may, in weighing testimony, look at the interest that one has in the outcome of the case. Mr. Westervelt is a party, and you may ask yourselves whether or not his interest has stimulated him to testify as he did. And then, on the other hand, you may consider Miss Kunz's attitude on that basis. She, too, is a party, and what effect has that upon her testimony?

The case to me is one that is simple. Services have been rendered this woman, and Mr. Westervelt is asking for a return, and he said it is a just request. On the other hand, Miss Kunz denies it. As I said before, the law has cast that duty upon you to decide what, if any, the measure of compensation should be.

I have some requests for charge for the plaintiff.

The plaintiff in this case is entitled to recover the reasonable value of services he rendered for the defendant. I so charge you.

In arriving at the value of the plaintiff's services, you have a right to take into consideration the fact that the results accomplished by him were valuable to the defendant. I so charge you.

The plaintiff is entitled to recover such sum of money as will adequately compensate him for services rendered, taking into account both the time involved and the importance of the transaction in which he was engaged for the defendant. I so charge you.

It is not necessary in this case that there should be an express contract for a specific sum for the services of the plaintiff; he is entitled to a fair and reasonable compensation for services rendered by him for the defendant. I so charge you.

You may swear the officer, and the Jury may retire.

(Officer sworn and jury retired.)

Mr. Friedman—I take an exception to your Honor charging the Jury all of the requests of the plaintiff.

THE PLAINTIFF'S REQUESTS TO CHARGE AS ORIGINALLY SUBMITTED TO THE COURT ARE AS FOLLOWS:

1. The plaintiff in this case is entitled to recover the reasonable value of the services he rendered for the defendant.

2. In arriving at the value of the plaintiff's services, you have a right to take into consideration

the fact that the results accomplished by him were valuable to the defendant.

3. The plaintiff is entitled to recover such sum of money as will adequately compensate him for the services rendered, taking into account both the time involved and the importance of the transaction in which he was engaged for the defendant.

4. It was not necessary in this case that there should be an express contract for a specific sum for the services of the plaintiff; he is entitled to a fair and reasonable compensation for the services rendered by him for the defendant.

EXHIBIT P-1

The Port of New York Authority

June 6, 1927

Miss Christine L. Kunz,
Hudson Terrace,
Fort Lee, N. J.

My dear Miss Kunz:-

The point has been reached in the construction of the Hudson River Bridge at which it is necessary to make certain surveys across your property. These will consist merely of the running of lines by survey parties and the driving of stakes together with the clearing away of a certain amount of brush.

On behalf of the Commissioners of the Port of New York Authority who are constructing the bridge, I wish to ask you to permit these surveys to be made across your property. If such permission is granted it will be an act of public-spirited cooperation to enable this improvement to be put through without unnecessary delay.

We hope within the near future to make a proper and equitable arrangement with you for the acquisition of so much of your property as is required for the bridge. Some such arrangement would have been made with you prior to this time except for the great pressure of duties under which our real estate and legal departments have been.

Meanwhile, I can assure you that our representatives, in making the surveys in question, will do so with the minimum of inconvenience to you and without any damage to your property except the minor interference involved in making the surveys as mentioned above.

Please let me thank you for any assistance that you can give us at this time.

Yours very truly,
The Port of New York Authority.
By J. E. Ramsey,
Chief Executive Officer.

K.

EXHIBIT P-2

June 21, 1927.

Port of New York Authority,
75 West Street,
New York, N. Y.

Attention: J. E. Ramsey.

Dear Sir:-

Miss Christine L. Kunz of Hudson Terrace, Fort Lee, N. J., has been in to see me relative to certain damage done to her property in the Borough of Fort Lee, between Hudson Terrace and the Palisades by men representing themselves to be surveyors in your employ. There has been some correspondence between you and Miss Kunz over the prospective survey. Your letter of June 6th addressed to her and signed by you as Chief Executive Officer stipulated that only minor damage would be done such as cutting of brush, etc., but now it develops that not only has brush been cut but a strip of about five feet in width across her property has been cleared of all trees of four or five inches and has destroyed other trees and now men from the Public Service Company claiming to be also in your employ, acting under instructions from you have also been cutting trees outside of the five foot strip and have sunk holes preparatory to erecting three poles across this property.

Miss Kunz advises me that she has never been

approached by anyone for the acquisition of this property or any part of it on your behalf nor does she know that any such move is contemplated on your part.

I will be very glad to take the matter up with your representative should he care to call at the office as I do not wish to be forced into the position of defending Miss Kunz's rights to her own property without knowing definitely the plans that you have in regard thereto. Certainly considerable damage has been done and apparently still more is contemplated. If it is all for the purpose of assisting on the bridge enterprise in which we are all anxious to assist, all well and good, but Miss Kunz does not feel that she should be made to suffer personally in a preliminary way without some assurance of compensation.

I have advised Miss Kunz to take no further action until I have heard from you.

Respectfully yours,

W/ES

EXHIBIT P-3

June 21st, 1927

Public Service Corporation,
Terminal Building,
Newark, N. J.

Gentlemen:-

Miss Christine L. Kunz, the owner of property in the Borough of Fort Lee, extending from Hudson Terrace easterly to the Palisades in the vicinity of the Hudson River bridge has been in to see me reltaive to certain damage which is being done to her property by men in your employ ap-

parently in charge of one Geiger and acting as they informed her under instructions of the Port of New York Authority. These men have cut trees and underbrush off this property in a wide strip and have been excavating holes preparatory to the erection of poles presumably to carry electric wires.

Miss Kunz does not want to stand in the way of the development of the bridge but no approach has been made to her for any property rights of any kind up to the present time except the right to make surveys which has been applied for by the Port of New York Authority. I do not wish to stand in the way of this enterprise but some arrangement will have to be made by your company if they are to go forward with the work without molestation on the part of Miss Kunz. I have advised Miss Kunz to take no further action until I hear from you.

Respectfully yours,

WW/ES.

EXHIBIT P-4

Public Service Electric and Gas Company

Newark, N. J., June 23, 1927.

Mr. Warner W. Westervelt, Jr.,
78 Main Street,
Hackensack, N. J.

Dear Sir:-

This is to acknowledge receipt of your letter of June 21st, with reference to damage which, it is alleged, has been done by Public Service men on the property of Miss Christine L. Kunz, in the Borough of Fort Lee.

I will have this matter investigated at once and will report to you at a later date.

Yours very truly,
Thomas Sproule, signed.
General Supt. of Distribution,
Electric Department.

TS/S.

EXHIBIT P-5

June 24, 1927.

Mr. Warner W. Westervelt, Jr.,
78 Main Street,
Hackensack, New Jersey.
Dear Mr. Westervelt:

I am in receipt of your letter of the 21st instant, relating to property of Miss Christine L. Kunz of Hudson Terrace, Fort Lee, New Jersey, required for the ayproach to the Hudson River Bridge.

I have instructed Mr. Dudley, our Real Estate Attorney, and Mr. Lanterman, our Real Estate Agent to arrange to confer with you immediately relative to this matter.

Yours very truly,
J. E. Ramsey (sgd.)
Chief Executive Officer.

JER/L

EXHIBIT P-6

Public Service Electric & Gas Comany
Newark, N. J., June 29, 1927

Mr. Warner W. Westervelt, Jr.,
Counselor At Law,
78 Main Street,
Hackensack, N. J.
Dear Sir:-

In further reply to your letter of June 21st, in

reference to alleged damage to the property of Miss Christine L. Kunz, in the Borough of Fort Lee, I find, upon investigation, that our men were under the impression that land had been taken over by the Port Authority and did start the erecting of poles across this property. However, as soon as they were notified that they were trespassing, they stopped work and nothing further has been done or will be done until the property is released to us by the Port Authority.

I regret very much that this misunderstanding occurred, and trust you will see the reason for it.

Yours very truly,
Thomas Sproule, signed.
General Supt. of Distribution,
Electric Department.

TS/S.

EXHIBIT P-7

June 30, 1927.

Mr. Warner W. Westervelt, Jr.,
78 Main Street,
Hackensack, New Jersey.
Mr. dear Mr. Westervelt:

I am making reference to yours of the 21st inst. concerning the matter of Miss Christine L. Kunz of Hudson Terrace, Fort Lee, part of whose property at tha tpoint the Port Authority needs to acquire for the construction of the Hudson River Bridge.

I understand that Mr. Dudley and Mr. Lanterman of our Legal and Real Estate Departments have conferred with you upon the matter of purchase of the necessary property as well as the conditions under which the owner will permit the Port Authority to prosecute the necessary work

incident to actual construction work, contract for which has already been awarded.

The Port Authority has no other thought than to deal fairly and equitably with the owners of property which the construction of the Hudson River Bridge makes necessary for it to acquire.

There has apparently been some misunderstanding somewhere and we are quite as anxious to correct it as are you. More than 2 months ago our Real Estate representative called on Miss Kunz at her home following an interview in this office, and with a map, duplicate of which was left with you by Mr. Lanterman, explained to Miss Kunz just how much of her property the Port Authority needed, stating the area of that parcel in square feet, and made her a definite offer for the same. Miss Kunz could not be persuaded to name any price and stated that prices paid neighbors for property, might guide her in determining a figure to ask and requested our representative to see her thereafter.

Later it became necessary for us to make further surveys on this and other property in the neighborhood to establish correct lines for the contractor who will construct the cut for the Approach between Hudson Terrace and the cliff front. In line with our policy we requested owners of property to grant permission to our survey parties to conduct operations involving the cutting away of brush, undergrowth, etc. I have since learned that through misunderstanding the Power Company has excavated post holes without going through the formality of requesting permission from your client, they believing, however, that the privilege granted by Miss Kunz in response to our request, provided for this detail as well.

If the course of any of our representatives has exceeded the authority given by your client, we very much regret it as well as any other inconvenience occasioned Miss Kunz.

In response to your complaint that the holes dug were on the property not in the area required by the Port Authority, I have had our Engineer of Construction at Fort Lee make a recheck of his survey. He informs me that these post holes are north of our proposed southerly right of way line as delineated on the map which was left with you.

I believe Mr. Lanterman made a definite offer to Miss Kunz through you, of seventeen thousand five hundred dollars ($17,500) for the area delineated on map HRB-S48. This I understand is consistent with prices paid for comparable property in the immediate neighborhood and I trust that you have been able to persuade Miss Kunz to accept it or to indicate the lowest price that she will accept. Should it develop that your client would prefer to dispose of the entire area comprised in lots 23 and 24 in block 153 it is just possible that we might find a way to aid her, providing she places a reasonable figure on it.

However, what is pressing and urgent at this time is disposition of the smaller area immediately required, and we are anxious to reach an agreement with your client without delay. Will you not help us by persuading your client to an immediate decision, likewise, in view of the fact that this area must be acquired immediately either through friendly private negotiations or through condemnation action of negotiations fail;

Exhibit P-7

will you have Miss Kunz execute an instrument providing privilege or license to the Port of New York Authority, its employees, agents, or contractors' agents to go upon this area for every purpose incident to the prosecution of the work under the contract and otherwise, pending the execution of formal contract for purchase of the property needed.

Yours very truly,
J. E. Ramsey (sgd.)
Chief Executive Officer.

K.

Exhibit P-8

Beginning at a point on the Easterly side of Hudson Terrace at the intersection of the said Easterly side of Hudson Terrace and property line dividing lands now or formerly of Louise Vogler and Palisades Interstate Park Commission and running thence along the Easterly side of Hudson Terrace South 21 deg. 28 ft. 18 in. West a distance of 67.42 feet to the point and place of beginning.

Beginning at the above described point and running thence (1) South 52 deg. 55 ft. East along lands now or formerly of Louise Vogler a distance of 528.474 feet to a point; thence (2) North 75 deg. 30 ft. 06 in. West a distance of 337.323 feet to a point; thence (3) North 53 deg. 01 ft West along lands now or formerly of A. K. O'Hashi a distance of 180.733 feet to a point; thence (4) Northerly along the Easterly side of Hudson Terrace N. 21 deg. 28 ft. 18 in. E. a distance of 134.84 feet to the point and place of beginning.

Issued Apr. 16, 1927. The Port of New York Authority, Bridge Department.

EXHIBIT P-8

HRB-S48

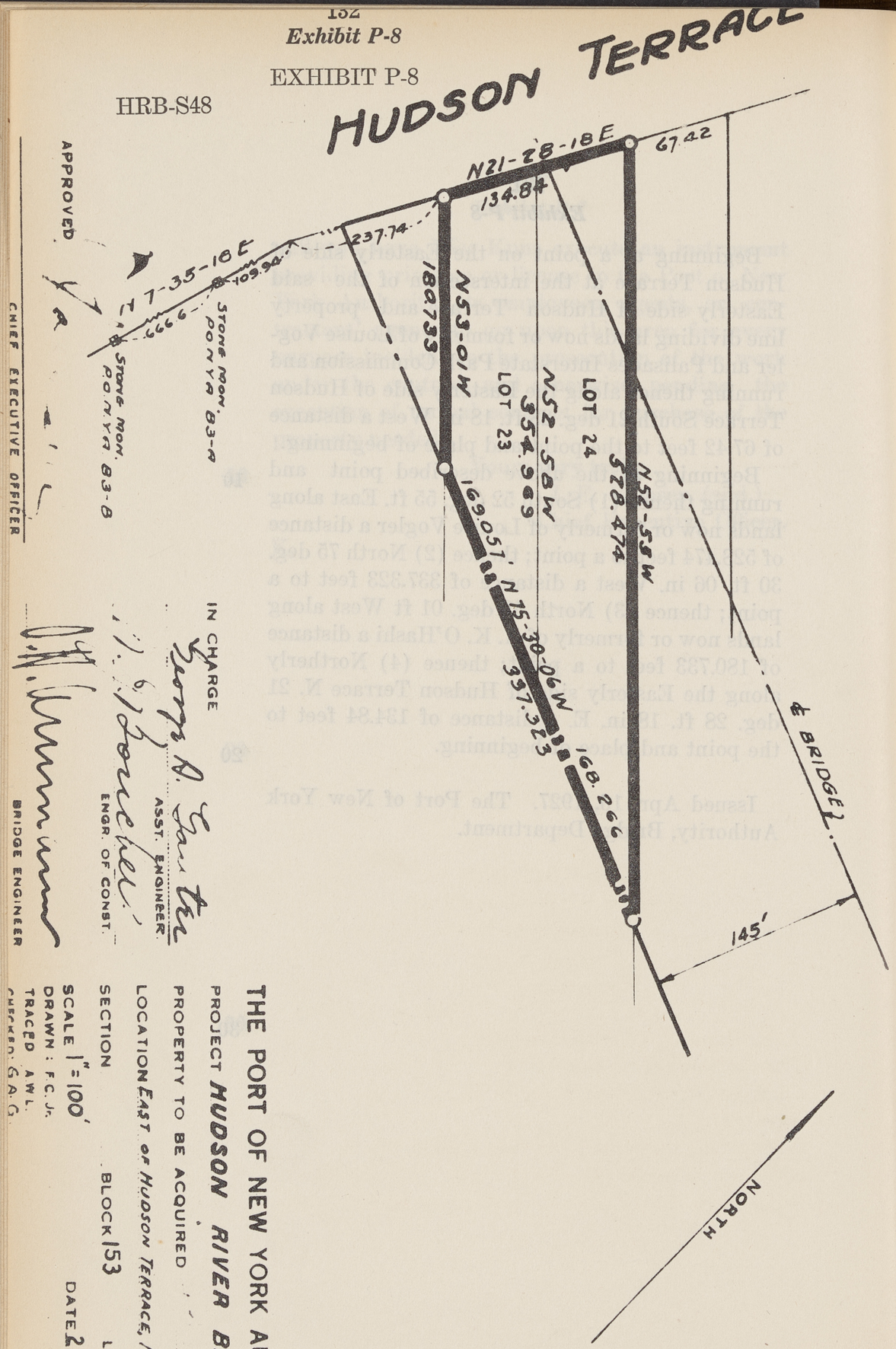

EXHIBIT P-9

Warner W. Westervelt, Jr.
78 Main Street,
Hackensack, N. J.

August 19th, 1927.

J. E. Ramsey, Chief Executive,
Port of New York Authority,
75 West Street,
New York, N. Y.

Dear Sir:-

Your letter of August 15th was rather late in being delivered and I did not receive same until Thursday night of this week and evidently our letters crossed in the mail. I think my letter of the 17th clearly states my position and replies to your letter of the 15th. I cannot, however, accept your offer of $68.500 00 as I consider my property worth all that I have asked you for in my recent letter.

Very truly yours ,
Christine L. Kunz (sgd.)

WE/ES

EXHIBIT P-10

Warner W. Westervelt, Jr.
Counselor At Law
78 Main Street,
Hackensack, N. J.

August 17, 1927.

J. E. Ramsey, Chief Executive
Port of New York Authority,
75 West Street, New York, N. Y.

Dear Sir:

Replying to your letter of August 9th, to my attorney Warner W. Westervelt, Jr., Esquire, would say that I have carefully considered your

offer of $80,000.00 for my property in Fort Lee. I have had this property appraised by several disinterested appraisers and the valuation that they have put upon it is $100,000.00 and I consider this a fair price and the present market value of the property. However, I do not wish to appear too stubborn in this matter nor to unduly delay the operations of the Port of New York Authority and I will therefore agree to consider an offer of $90,000.00 for this property provided that I receive a substantial binder and a proper contract without delay and provided that the balance of the purchase price be paid in cash within 30 days from the signing of the contract.

I also wish to point out to you that in the event that this property is sold I have no place to go and must have time to make adequate provisions for a future home. I therefore wish to have stipulated in the contract that I shall remain in possession of the house on the premises until such time as it shall no longer be safe for me to stay there because of the operations being carried on.

I also wish to call your attention again to the fact that I have suffered much annoyance and been put to a great deal of expense because of action that I have been compelled to take to protect myself from the unwarranted trespassing of employees of the Port of New York Authority or contractors employed by them and this expense I must insist shall be borne by you.

Inasmuch as Mr. Westervelt is out of town at the present time I would suggest that you reply directly to me at Hudson Terrace, Fort Lee, N. J.

Very truly yours,
(Signed) Christine L. Kunz.

JL/ES

EXHIBIT P-11

Warner W. Westervelt, Jr.
78 Main Street
Hackensack, N. J.

July 12th, 1927.

Mr. E. Tracy Lanterman,
75 West Street,
New York, N. Y.

Dear Sir:

In view of the fact that I have not as yet come to a conclusion as to the proper value to place upon the property shown on the blue print submitted to my attorney Mr. Westervelt by you marked HRB-S48 showing lots 23 plus 24, block 153 as of 2|1|27, I hereby grant permission to the Port of New York Authority to construct upon the property indicated upon this blue print within the heavy white line such poles as may be necessary for the support of the electric power lines across said property as is now contemplated. This permission is granted in view of the express desire of the Port of New York Authority to acquire said property and should the Port of New York Authority determine not to acquire this property this line is to be removed at once and the surface of the ground reduced to its former contour and the expense of the said Christine Kunz shall be repaid to her.

Very truly yours,
Christine L. Kunz (sgd.)

WW/ES

EXHIBIT P-12

The Port of New York Authority

July 13, 1927.

Mr. Warner W. Westervelt, Jr.,
78 Main Street,
Hackensack, New Jersey.

Dear Mr. Westervelt:-

Receipt of your favor of the 12th together with enclosure from Miss Christine L. Kunz, is acknowledged with thanks. I shall be glad to comply with your request and furnish Miss Kunz with a duplicate of map HRB-S48.

I trust that I have sufficiently impressed upon you the vital need of reaching an agreement with your client for purchase of property needed by the Port Authority. As you know, the work under the contract for the construction through the cliff area is now under way and our Bridge Department can ill afford to suffer any interruption in the progress of this work. Aside from the desire to prosecute to a conclusion the work within the limited period of time, you also must bear in mind that a penalty attaches to any delay on the Port Authority's part through failure to provide sufficient area of required real estate. Since the matter of acquiring the entire area of Miss Kunz property as embraced in lots 23 and 24 was first broached to you, the necessity for having the same for bridge purposes is more strongly apparent.

I trust, therefore, that you will use your good offices to persuade Miss Kunz to deal fairly with us in negotiating the purchase of the same. On each occasion that I have talked with her, she has stated that she was quite willing to sell all of this property.

I have passed on to the Bridge Department the

license or permission given by Miss Kunz for the erection of distributing poles and I wish to thank you for sending this to me.

Very truly yours,
E. Tracy Lanterman,
K. Real Estate Department.

EXHIBIT P-13

The Port of New York Authority

July 15, 1927.

Miss Christine L. Kunz,
Hudson Terrace,
Fort Lee, New Jersey.

My dear Miss Kunz:-

May I express my appreciation for the opportunity you afforded me to discuss with you the details of the Port Authority's need of certain of your property at Fort Lee, for the vonstruction of the Hudson River Bridge, when you called at this office yesterday.

As explained to you, the map as originally made, indicated the minimum area that we could possibly use, and it has since been found that this area is totally inadequate, for bridge purposes. This to such an extent that we find now that the total area of lots 23 and 24 in block 153 will be required, and we, therefore, are anxious that you indicate to us the price upon which we may negotiate its purchase from you. You heard from our Bridge Engineer as well as myself how necessary it is for us to acquire this area without delay. I tried to impress upon you with our sincerity of purpose to deal fairly with you not only in the acquisition of such property as we need, but also to conduct all of our activities with a minimum of inconvenience to you. We are now proceeding un-

der authority of your verbal permission given yesterday to erect a fence along the southerly line of your property, i.e. lot 23, from the westerly point of said line as shown on map HRB-S48 to the easterly point of said line at the cliff. In this fence we are providing a gate for your convenience at the point desired by you.

Confirming my verbal statement to you we already replaced the gate into your property as requested and hope that the work has been done satisfactorily.

In acquiring your property as represented by lots 23 and 24 I want to assure you that we will conduct its acquisition with the least of inconvenience to you as circumstances will permit. By this I mean that we will permit occupancy by you of the premises just as long as in the judgment of the bridge engineer such occupancy is safe and will not interfere with the proper progress of our activities incident to bridge construction.

Our desire is to acquire this property through private friendly negotiations and without thought of condemnation action unless the unreasonableness of your asking price makes this step necessary in proper protection of the Port Authority's interests. I feel certain that after the discussion we had that you will take a reasonable and businesslike view of the situation, that you will reflect upon the benefit to hundreds of thousands throughout the state that the great project makes possible, and will feel that you have a part in it to the degree at least of naming a reasonable figure for your property.

Consistent with your promise of a promptly reply to a notice from me to that effect, i.e. that we require this area, I shall expect to receive without

delay a price you expect the Port Authority to pay for the same. That there may be no misunderstanding, this property includes the total area of lots 23 and 24 in block 153, having an approximate frontage on Hudson Terrace of 134 ft. and running through to the face of the cliff, having a frontage thereon of 128 ft more or less, together with all buildings and improvements on said property.

Miss Kunz, won't you please do me the favor of getting this information to me without delay and accept in advance my thanks for your cooperation.

Yours very truly,
J. E. Ramsey, signed.
K. Chief Executive Officer.

EXHIBIT P-14

Monday.

Dear Mr. Westervelt:-

As I did not get speech with you today I hasten to tell you that on Friday night three men, Mr. Johnson, Mayor of Englewood, Mr. Bryant, Tax Assessor of Englewood, and Mr. Howeles, Real Estate Man and also in the Fort Lee Bank, came to me and said that they were engaged by the Port of New York Authority to examine my premises and set a value on it, etc., which they did. I have made arrangements to have it valued also, and when that is done will send this statement on to you. Today I received the enclosed. Will you acknowledge it and say that you will have all speed made to comply with their request, etc., or shall I do so? I don't want to put any statement down in ink.

The fence on the S-lot line 955 ft. is almost completed—11 ft. and 3 strands of heavy hog wire on top.

Fodey Bros., (getting things ready so that bridge work begins) have bought lots of my stuff and given me a good price. The big men of the Bridge are here daily.

Yours very truly,
C. L. Kunz, signed.

EXHIBIT P-15

Warner W. Westervelt, Jr.
78 Main Street
Hackensack, N. J.

July 20th, 1927.

Port of New York Authority,
75 West Street,
New York City, N. Y.
Attention J. E. Ramsey.

Your letter of the 15th inst. addressed to Miss Christine L. Kunz has been sent by Miss Kunz to me.

She wishes me to write you that she is having her property appraised, so as to be in a position to set a price on it within a few days. I will immediately communicate further with you upon receipt of figures from her.

Yours respectfully,
Warner W. Westervelt, Jr.

W-K

EXHIBIT P-16

Warner W. Westervelt, Jr.,
Counselor At Law,
78 Main Street
Hackensack, N. J.

July 20, 1927.

Miss Christine L. Kunz,
Hudson Terrace,
Fort Lee, N. J.

My dear Miss Kunz:-

I received your letter this morning, enclosing

letter of July 15th, 1927, received by you from the Port of New York Authority. I shall be glad to receive appraisal from you. I have acknowledged Mr. Ramsey's letter and enclose herewith duplicate of it.

Yours respectfully,
Warner W. Westervelt, Jr.

W-K

EXHIBIT P-17

This Agreement made the 29th day of August in the year of Our Lord One Thousand Nine Hundred and Twenty-seven, between Christine L. Kunz, unmarried, of Hudson Terrace, in the Borough of Fort Lee, County of Bergen, State of New Jersey, party of the first part, and The Port of New York Authority, a body corporate and politic, established by compact between the States of New York and New Jersey, ratified by the Congress of the United States, having its principal office at No. 75 West Street, in the Borough of Manhattan, in the City, County and State of New York, party of the second part;

Witnesseth:

First: That the said party of the first part, for and in consideration of the sum of Eighty-Four Thousand ($84,000.00) Dollars to be paid and satisfied as hereinafter mentioned, and also in consideration of the covenants and agreements hereinafter mentioned to be performed by the said party of the first part, will well and sufficiently convey to the said party of the second part, its assigns and successors, by Deed of warranty free of all encumbrances, easements or encroachments whatsoever, on or before the 2nd day of September next ensuing the date hereof,

All that certain lot, tract or parcel of land situate, lying and being in the Borough of Fort Lee, County of Bergen and State of New Jersey, described as follows:-

Beginning at a point on the Easterly side of Hudson Terrace at the intersection of the said Easterly side of Hudson Terrace and property line dividing lands now or formerly of Louise Vogler, and Palisades Interstate Park Commission, and running thence along the Easterly side of Hudson Terrace South 21 deg. 28 ft. 18 in. West a distance of sixty-seven and forty-two hundredths (67.42) feet to the point and place of beginning.

Beginning at the above described point, and running thence, (1) South 21 deg. 28 ft. 18 in. West, along the Easterly side of Hudson Terrace, a distance of one hundred thirty-four and eighty-four hundredths (134.84) feet to the North West property corner of lands now or formerly of A. K. Ohashi; thence (2) South 53 deg. 01 ft. East, along lands now or formerly of A. K. Ohashi, a distance of nine hundred fifty-five (955) feet more or less to a point which lies on the edge of the Palisades Cliffs; thence (3) Northeasterly along the top of the Palisades a distance of one hundred twenty-eight and seventy-four hundredths (128.74) feet measured at right angles to the preceding course, to a point which lies on the Southeasterly property corner of lands now or formerly of Louise Vogler; thence (4) North 52 deg. 55 ft. Wst along lands now or formerly of Louise Vogler a distance of nine hundred seventy-eight (978) feet more or less to the point and place of beginning.

And the said The Port of New York Authority, for itself, its successors and assigns agrees to pay to the said party of the first part the sum of Eighty-Four Thousand ($84,000.00) Dollars as and for the purchase money of the foregoing described land and premises, in the following manner, that is to say:

On execution of this agreement for which this is also a receipt.....$10,000.00

On delivery of deed, cash $74,000.00

Plus or minus any amount adjusted or apportioned for unpaid taxes or water rent.

Second: It is further agreed, by the parties hereto that the aforesaid deed shall be delivered and received at the office of the Port of New York Authority, No. 75 West Street, in the Borough of Manhattan, City, County and State of New York, at 11 A. M. o'clock on the second day of September next ensuing the date hereof.

The taxes, insurance premiums, rents and interest on mortgage, if any, shall be adjusted, apportioned and allowed as of the day of delivery of said deed.

Third: During the period prior to said September 2nd, 1927, the party of the second part, its successors or assigns officers, servants, employees, contractors and/or sub-contractors, may, if it so elects, enter upon the land hereinabove described for the purpose of doing any necessary work connected with the construction of the said bridge and may do and perform any act or thing in connection therewith. For such purpose the party of the second part shall have the undisturbed use of the premises except for the part occupied by the dwelling house of the party of the first part, together with a right of ingress and egress thereto for the party of the first part, during such period and shall not be liable to the party of the first part for damages for trespass, for changes in or

improvements to the property or otherwise, it being the intention of this provision to grant to the party of the second part the right to enter into the possession of the said property so that during such period it may carry out its duty under the law to build said bridge; and the party of the first part further agrees that in the event it shall be necessary hereunder to institute condemnation proceedings, no compensation shall be payable for any improvement upon the property put thereon by the party of the second part while in such possession.

Fourth: The party of the first part agrees to pay and cause to be cancelled of record a certain assessment on account of Sewer in Hudson Terrace, if some or any part thereof is a lien against said premises, which appears to be the sum of about One Hundred Seventy Five ($175.00) Dollars, with any interest or penalties.

Fifth: If the title of the party of the first part is not marketable, then the party of the second part shall be relieved of its obligations to purchase the property hereunder, and may forthwith institute condemnation proceedings or any other proceedings which it may deem necessary, and in that event the party of the first part shall return to the party of the second part any sum paid by the party of the second part on account of the purchase of said property, said sum to remain a lien on said property pending its return. Upon making return of any such funds, the party of the first part shall be relieved of any and all obligations of any kind or character hereunder.

Sixth: At the time of the passing of title on the date as above specified, the party of the first part hereby agrees to execute and deliver to the party

of the second part, at the expense of the party of the first part, a general release of any and all claims for damages and all injuries up to that time sustained by the party of the first part on account of any damage or injury to said property or to any other personal property of the party of the first part; and also to release the party of the second part from and on account of any and all claims for damages or injuries sustained or to be sustained by reason of any damage to any personal property of the party of the first part on said premises between the dates of September 30, 1927, and the date of the removal of the party of the first part from said premises, as hereinafter more specifically set out; and also for any damages or injuries sustained or to be sustained by reason of interference with easements of light, air, access, ingress and egress to other and/or contiguous property of the party of the first part by reason of the construction, operation and maintenance of the said bridge, the plazas and approaches thereto; also on account of any injuries sustained to the person of the party of the first part and/or any person or persons who come upon said property with her invitation and/or knowledge and consent on and after the 30th day of September to and until the removal of the party of the first part from said premises at the time hereafter more specifically referred to.

Seventh: It is agreed that the party of the first part may remain in the dwelling house upon said premises and occupy so muh of said premises as is covered by said dwelling house and any necessary outbuildings connected therewith together with the right of ingress and egress therefrom to the 15th day of October 1927. On or before that

date the party of the first part agrees to remove from said premises and to take with her on or before said time all of her personal possessions.

It is agreed that the party of the first part may enter upon said premises for the purpose of removing any fruit trees now thereon and to dig up, transplant, and remove the same at any time before the first day of January 1928, but that said party of the first part shall not enter upon the premises after said 15th day of October for any other purpose than for the purpose of removing said fruit trees and for no longer than required for said purpose.

It is understood and agreed that by reason of the building operations now being carried on by the party of the second part the property may on and after said date of September 30 1927, become unsafe for life and limb, and the party of the second part agrees to allow the party of the first part to remain on said premises only at her urgent request and at her own risk.

Eighth: It is agreed that the paragraphs numbered "Sixth" and "Seventh" shall survive the passage of the deed as hereinabove provided.

In Witness Whereof, the said parties have hereto interchangeably set their hands and seals the day and year first above mentioned.

Christine L. Kunz (sgd.) (L.S.)
The Port of New York Authority
By J. E. Ramsey (sgd.)
Chief Executive Officer.

Signed, sealed and delivered
in the presence of
William E. Ellis (sgd.)
Approved: J. S. D.

State of New York
County of New York } ss.

Be it remembered that on this 29th day of August, 1927, before me, the subscriber, personally appeared Christine L. Kunz, who I am satisfied is the person named in the within Contract of Sale and I having first made known to her the contents thereof, she did acknowledge that she Signed, Sealed and Delivered the same as her voluntary act and deed, for the uses and purposes therein expressed.

William E. Ellis,
Master in Chancery of N. J.

State of New York
County of New York } ss.

On the 29th day of August in the year Nineteen Hundred and Twenty-Seven, before me personally came, John E. Ramsey, to me known, who, being by me duly sworn did depose and say that he resides in Garden City, New York; that he is the Chief Executive Officer of The Port of New York Authority, the Corporation described in and which executed the above instrument; that he knows the Seal of said Corporation.

H. S. Quigel (sgd.)
Notary Public, Westchester County.
Certificates filed in New York County;
Clerk's No. 28, Register's No. 8021.
Certificate filed in Richmond County,
Term Expires March 30, 1928.

(Seal)
H. S. Quigel
Notary Public
Westchester County

EXHIBIT P-18

July 22, 1927.

Port of New York Authority,
75 West St.,
New York, N. Y.

Attention: Mr. E. Tracy Lanterman.

Dear Sir:-

In accordance with your recent request I am enclosing herewith copy of letter mailed to Mr. J. E. Ramsey in the Kunz matter. I trust this will prove satisfactory for your purposes.

Very truly yours,

WW/ES
Incs.

EXHIBIT P-19

The Port of New York Authority

August 9, 1927.

Warner W. Westervelt, Jr., Esq.,
78 Main Street,
Hackensack, N. J.

Subject: Title to Property of Christine L. Kunz at Fort Lee, New Jersey.

Dear Mr. Westervelt:-

I received your letter of August 5, 1927, about the property of Miss Kunz.

The price of a hundred thousand dollars ($100,000.00) which Miss Kunz has set upon the entire tract of her property seems to us to be excessive. Since receiving your letter I have discussed this matter with our Real Estate Department, and have gone over the estimates of our Real Estate Appraisal Committee.

I wish by this letter to offer Miss Kunz, through you, the sum of eighty thousand dollars ($80,000.00) for the tract in question.

You will appreciate from your conversation with Mr. Lanterman and Mr. Dudley that our need for the immediate use of the property in question is urgent. I wish to request your client, therefore, to give us as early a response as possible to the above offer.

I believe that Mr. Dudley and Mr. Lanterman are arranging through you a contract covering the use of the property until it can be acquired by purchase or condemnation.

As we are already threatened with claims from our Contractor based on a denial of the use of the premises in question, any effort which you may use to expedite this matter will be of great service to us at this time.

Yours very truly,
J. E. Ramsey, signed,
Chief Executive Officer,
The Port of New York Authority.

EXHIBIT P-20

Warner W. Westervelt, Jr.,
Counselor At Law,
78 Main Street,
Hackensack, N. J.

August 9, 1927.

Miss Christine L. Kunz,
Hudson Terrace,
Fort Lee, N. J.

My dear Miss Kunz:-

Mr. Lanterman called at my office, as I told you he expected to do, this morning with a check for ten thousand dollars ($10,000.00) and a proposed agreement as I outlined to you over the telephone. I told him that such an arrangement was quite unsatisfactory to you and that you refused to con-

sider anything without a definite, final offer on the part of the Port Authority to purchase the property. After considerable discussion of the matter pro and con Mr. Lanterman has made an offer, for which I expect to have a letter in my possession tomorrow morning, of eighty thousand dollars ($80,000.00). Please consider this and call at my office tomorrow morning to go over the letter so that we can answer without unnecessary delay. Mr. Lanterman says that the work cannot be delayed and the Port Authority is going to instruct the contractors to proceed with the work anyway so that unless we come to an agreement on the price at once, summons in condemnation proceedings will have to issue at once.

Something will have to be done one way or the other within twenty-four hours so that it is quite important that you call at my office tomorrow morning with your mind clearly made up as to what you want done.

Yours very truly,
Warner W. Westervelt, Jr., signed.

W/O

EXHIBIT P-21

Warner W. Westervelt, Jr.,
Counselor At Law
78 Main Street
Hackensack, N. J.

August 10, 1927.

Miss Christine L. Kunz,
Hudson Terrace,
Fort Lee, N. J.
Dear Madam:-

Enclosed please find letter which I received this morning from The Port of New York Authority, relative to the purchase of your property. I also

have in my files the proposed agreement referred to in this letter, which is the one I spoke to you about over the telephone.

The proposed agreement states that The Port of New York Authority will acquire your property either by purchase or by the institution of condemnation proceedings within twenty days and will pay ten thousand dollars ($10,000.00) on account of the purchase price, as agreed upon between yourself and the representative of The Port of New York Authority, provided permission is immediately given to enter upon and use the property.

I will be glad to go over this matter with you at your convenience.

Yours very respectfully
Warner W. Westervelt Jr., signed.

W/JS

EXHIBIT P-22

The Port of New York Authority

August 15, 1927.

Miss Christine L. Kunz:-
Hudson Terrace,
Fort Lee, N. J.
My dear Miss Kunz:-

I am taking this opportunity to again call your attention to the matter of the acquisition of your property at Fort Lee. You have known for a period of three months, from being advised at this office, also by our real estate agent at your own home, at both of which places maps were shown you giving the location of the bridge right of way, that The Port of New York Authority would require a portion, if not all of your property at Fort Lee, designated on the map as lots 23 and 24 in block 153.

When you conferred with me in this office you explained a willingness to cooperate to the end that the great public project which we have the responsibility of constructing might be expedited, you further indicated that if we made known to you in written form just what we wished you would respond without unnecessary delay. On July 12th we advised you what our needs were. The first definite answer to a request that you name a figure for the area we require, i.e. all of lots 23 and 24 in block 153, was received here on August 6th. On August 8th we requested a conference with you and your attorneys which you declined to attend.

On August 9th our real estate representative conferred with your attorney, Mr. Westervelt, in his office in Hackensack, and made a counter proposal which was confirmed in letter form the same day and which should have reached you on August 10th. After what we considered sufficient time had elapsed for an answer to be received our representative called Mr. Westervelt but with no definite result, and was advised that it would be perfectly agreeable for us to continue negotiations directly with yourself.

On the morning of August 12th our real estate representative with a representative from the Bridge Department called to see you but you were not in. They called again at about one o'clock in the afternoon when you clearly indicated that you had no desire to confer on the matter further stating that you had reached no decision in the matter and refused to name a definite date when a decision would be reached and we advised of such decision.

The importance of our construction work being finished without hindrance or delay was pointed out to you and you were informed that we desire to have possession of the property without delay and further that the Port Authority wished to deal with you equitably and fairly.

We believe that our negotiations thus far have been conducted with fairness and equity and cannot understand why you choose to pursue the course that you have thus far followed.

In making the offer which you have before you, the price stated was conditioned upon immediate acceptance. These negotiations having failed, we are forced to acquire the property through condemnation and our previous offer is hereby withdrawn.

Our offer to you, hereby made, for this purpose is now the sum of sixty-eight thousand five hundred ($68,500.00). We enclose map HRB-S119 showing property to which we refer and which is to be acquired.

If no written reply is received to this letter and delivered at the office of the said Port Authority, No. 75 West Street Borough of Manhattan, City, County and State of New York, on or before August 22, 1927, at five o'clock in the afternoon, the Port Authority will assume that the offer has been refused.

Yours very truly,
J. E. Ramsey, signed,
Chief Executive Officer.

K.

EXHIBIT P-23

August 22, 1927.

Re: Title of Christine Kunz in Fort Lee.
Miss Christine L. Kunz,
Hudson Terrace,
Fort Lee, N. J.

Exhibit P-24

Dear Miss Kunz:

I received your letter of August 17th, 1927.

The price of $90,000 at which you offer us your property is excessive. The Port Authority will not pay it.

I regret very much that you have not seen fit to offer your property to us at a reasonable figure, and also, pending negotiation, to allow us to use your property with proper guarantees to you. You have not, and we must now use the remedies the law gives us.

The Commissioners of the Port Authority have now decided that the use of the property must be gained without further delay and have accordingly directed me to institute at once proceedings for the condemnation of your property and for its immediate use. I hope therefore that as soon as possible and within the next few days, you will arrange to remove from the premises, taking with you such of your possessions as you desire to keep.

Neither the Port Authority, nor its employees nor contractors, has trespassed upon your property without your consent, nor have they done any damage thereto except minor injuries to shrubbery removed with your acquiescence and accordingly recognizes no claim for compensation on account thereof.

Yours very truly,
J. E. Ramsey (sgd.)
Chief Executive Officer.

EXHIBIT P-24

Fort Lee,
9-7-27.

Dear Mr. Westervelt:-

I presume your telephone call was to ask if I had delivered the papers to the boys. I did not see my way clear to do so as I had no further control of the property. Sorry it was impossible for me to leave the house and go to the village and call you up.

Very truly yours
C. L. Kunz, signed.

Exhibit P-25

EXHIBIT P-25

September 9th 1927.

Miss Christine L. Kunz,
Fort Lee, N. J.

Dear Miss Kunz:-

Your note enclosing notices prepared for service upon your campers received this morning. I did not call you on the telephone as you seem to think. The Port of New York Authority called me on the phone and asked me if I knew what you had done concerning the campers. I told them I had prepared the notices and you were to serve them. They then said that they would try to reach you by telephone and ask you to take the matter up with me as they are about to do some blasting, I believe, in the neighborhood of the buildings occupied by your campers and some damage may result. That accounts for the telephone call.

I told them that you had told me that you would be in my office some day this week anyway, and that I had not yet seen you. Please let me know when you will call so that I will be sure to be in. As today is Friday, of course, I will not see you before next week. On Tuesday I will be in court during the morning. I can see you either Monday

afternoon after three, or Wednesday morning, the 14th.

Very truly yours,

W:W.

EXHIBIT P-26.

This Contract made and dated the day of August in the year of Our Lord One Thousand Nine Hundred and Twenty-seven, by and between the Port of New York Authority hereinafter referred to as the Port Authority, party of the first part, and Louise Vogler, widow, of 4246 Broadway of Manhattan, City, County and State of New York, hereinafter referred to as the Owner, party of the second part;

Witnesseth, that

Whereas, the Port Authority under proper statutory authority is constructing a bridge, sometimes referred to as the Hudson River Bridge between the said Borough of Manhattan in the neighborhood of 178th Street, and the Borough of Fort Lee, County of Bergen, State of New Jersey, across the Hudson River, and

Whereas, the Port Authority by its duly constituted officers has decided in accordance with Section 5 of Chapter 41 of the Laws of New Jersey for 1925 that it is necessary and/or convenient that certain property of the Owner hereinafter described shall be immediately acquired for the construction, operation and maintenance of the said bridge, either by condemnation proceedings or by direct purchase, said lands being more particularly described as follows:

All that piece or parcel of land, situate, lying and being in the Borough of Fort Lee, County of

Bergen and State of New Jersey, particularly described as follows:

To establish the point of beginning: Starting at a certain stone monument being the first stone monument on the easterly side of Hudson Terrace lying to the south of the property hereinafter described, and running thence; (1) North 7 deg., 35 ft., 18 in. East (along a line in prolongation of the easterly side of Hudson Terrace as established by the aforesaid stone monument and a similar stone monument lying 666 feet, more or less, to the south thereof) a distance of 109.94 feet to a point; thence (2) North 21 deg., 28 ft., 18 in. East along the easterly side of Hudson Terrace a distance of 440.00 feet to a point which is the intersection of the southerly property line of lands now or formerly of the Palisades Interstate Park Commission, and the easterly side of Hudson Terrace; thence (3) South 52 deg., 51 ft., 45 in. East along lands now or formerly of the Palisades Interstate Park Commission a distance of 701.131 feet to the point and place of beginning.

Beginning at the above described point; and running thence (1) North 75 deg., 30 ft., 06 in. West a distance of 59.879 feet to a point; thence (2) South 37 deg., 06 ft. West, along lands now or formerly of Ricardo Marchisio a distance of 29.731 feet to a point; thence (3) South 52 deg., 55 ft. East along lands now or formerly of Christine L. Kunz, a distance of 378 feet more or less, to a point which lies on the edge of the Palisades Cliffs; thence (4) Northerly along the top of the Palisades Cliffs to a point distant 64.57 feet measured at right angles to the preceding course, the said point lying on the southeasterly property corner of lands

now or formerly of the Palisades Interstate Park Commission; thence (5) North 52 deg., 51 ft., 45 in. West along lands now or formerly of the Palisades Interstate Park Commission a distance of 321 feet more or less, to the point and place of beginning.

and

Whereas, the Port Authority has heretofore paid to the Owner the sum of Ten Thousand ($10,000.00) Dollars by its check, the receipt of which is hereby acknowledged by the Owner;

Now, Therefore, this agreement witnesseth:

That in consideration of the sum of Ten ($10,000) Dollars and other good and valuable considerations, the parties have mutually agreed to and with each other as follows:

1. The Port Authority agrees that within thirty (30) days from the execution of this contract it will either enter into a valid contract of sale for the purchase of the above described property with the Owner, for the direct purchase thereof, the deed to be given and the full amount of the agreed consideration paid less any sums theretofore paid as hereinafter specified, within thirty (30) days after the date of the said contract of sale, such contract of sale to provide for immediate possession by the Port Authority, the deed to be given by the Owner to be a deed with full covenants of warranty free and clear of any liens, encumbrances or encroachments whatsoever (except for the encumbrance of a certain lease between Benvenuti Rossi and the Owner to be assigned to the Port Authority); or within said thirty (30) days to file a petition under the statutory authority conferred upon it to acquire the title to the said above described land by condemnation proceedings.

2. It is agreed that in the event that the property is acquired by direct purchase by the Port Authority as described in the preceding numbered paragraph, that the said sum of Ten Thousand ($10,000.00) Dollars heretofore paid to the Owner by the Port Authority, shall apply on account of the purchase price of the same as agreed to between the Owner and the representatives of the Port Authority, and shall be considered a down or earnest payment on account of said contract of sale.

In the event that the Port Authority does not so acquire said property by direct purchase, it is agreed that the said sum of Ten Thousand ($10,000.00) Dollars is considered and accepted as a payment on account of any award to which the Owner shall become entitled as a result of the condemnation proceedings to be instituted by the Port Authority as above described.

It is agreed that the said sum of Ten Thousand ($10,000.00) Dollars shall be and remain a lien for said sum in favor of the Port Authority on the land above described, pending the signing of said contract of sale or the institution of said condemnation proceedings.

3. During the said period of thirty (30) days from the execution hereof, the Port Authority, its successors or assigns, officers, servants, employees, contractors, and/or sub-contractors, may, if it so elects, enter upon the land hereinabove described for the purpose of doing any necessary work connected with the construction of the said bridge and may do and perform any act or thing in connection therewith. For such purpose the Port Authority shall have the undisturbed use of the premises during such period and shall not be liable to the

Owner for damages for trespass, for changes in or improvements to the property or otherwise, it being the intention of this provision to grant to the Port Authority the right to enter into the possession of the said property so that during such period it may carry out its duty under the law to build said bridge; and the Owner further agrees that in the event it shall be necessary hereunder to institute condemnation proceedings, no compensation shall be payable for any improvements upon the property put thereon by the Port Authority while in such possession. It is understood, however, that in the event that the Port Authority neither purchases nor condemns as herein contemplated it will pay for any damage done the above described property of the Owner.

In witness whereof, the said parties have hereto interchangeably set their hands and seals the day and year first above mentioned.

The Port of New York Authority

By_____

Chief Executive Officer.

_____ (L. S.)

State of New York
County of New York } ss.:

Be it remembered that on this day of August, 1927, before me, the subscriber, personally appeared Louise Vogler, who I am satisfied is the person named in the within Contract and I having first made known to her the contents thereof, she did acknowledge that she signed, sealed and delivered the same as her voluntary act and deed, for the uses and purposes therein expressed.

State of New York
County of New York ss.:

On the day of August in the year Nineteen Hundred and Twenty-Seven, before me personally came, John E. Ramsey to me known, who, being by me duly sworn did depose and say that he resides in Garden City, New York; that he is the Chief Executive Officer of The Port of New York Authority, the Corporation described in and which executed the above instrument; that he knows the Seal of said Corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by the order of the Board of Commissioners of said Corporation, and he signed his name thereto by like order.

New Jersey Court of Errors and Appeals

WARNER W. WESTERVELT, JR.,
Plaintiff-Appellee,

v.

CHRISTINE L. KUNZ,
Defendant-Appellant.

BRIEF OF PLAINTIFF-APPELLEE.

Statement of Facts.

The plaintiff-appellee Warner W. Westervelt, Jr., is a practicing member of the New Jersey Bar. His practice is largely "real estate law and the Orphans' Court and Chancery practice" (State of Case, p. 15, lines 1-12). He had been the attorney for the defendant-appellant for "probably for five years, maybe more" (State of Case, p. 15, lines 30-35).

The defendant-appellant having received a letter from the Port Authority of New York, Exhibit P-1 (State of Case, p. 122), the plaintiff-appellee represented the defendant-appellant in various matters connected with the property and looked out for her interests in connection with the same, until finally the property was sold by the defendant-appellant to the said Port of New York Authority for the sum of $84,000. He performed various incidental services in connection with the transaction and in connection with controversies concerning trespassers, &c. He was not acting in the capacity of broker, the only party who figures

in the case as being desirous of procuring same having been the said Port of New York Authority, which Port Authority had communicated with the defendant-appellant before she consulted the plaintiff-appellee (Exhibit P-1 dated June 6th, 1927, State of Case, p. 122). He never tried to procure a purchaser for the property; he did not urge Miss Kunz to sell the property. When he found out that the Port Authority required Miss Kunz's property for an approach to the Hudson River Bridge, he knew that Miss Kunz would be obliged to part with the title to her property by sale or condemnation proceedings, and he so advised her (State of Case, p. 19, lines 8-40). His only concern was to protect her interests and to procure for her the largest amount that she could realize for her property.

The plaintiff-appellee sued not for commissions or compensation for effecting a sale (State of Case, p. 5), but as shown by the complaint (State of Case, p. 5), by the bill of particulars (State of Case, p. 6), and by the testimony in the case. He made his claim for compensation the sum of $4,000, basing his charge not only upon the *quantum* of services rendered, but upon the theory that his experience and knowledge as a professional man, together with the importance of the transaction involved, warranted a charge in that amount.

After a large part of the service had been rendered and before bringing matters to a conclusion, the question of what would be a reasonable charge for services rendered and to be rendered was discussed by the parties (State of Case, p. 40, lines 25-40 and p. 41, lines 1-40). It was mutually agreed that a reasonable charge would be $4,000 (State of Case, p. 42, lines 1-40). When the transaction was consummated, Miss Kunz failed to pay Mr. Westervelt. He sued to recover the sum of $4,000

on a *quantum meruit* for services rendered. Four experienced practicing lawyers testified that in their opinion $4,000 was a fair and reasonable charge for the services rendered by the plaintiff-appellee (State of Case, pp. 45, 46, 49, 51 and 52). The jury brought in a verdict for $3,000 with interest, amounting to $3,129.00.

POINT I.

The plaintiff's case is not within the tenth section of the Statute of Frauds and Perjuries, and the Court was justified in refusing defendant's motion for a nonsuit.

The Tenth Section of the Statute of Frauds and Perjuries provides as follows:

> "No broker or real estate agent selling or exchanging land for or on account of the owner shall be entitled to any commission for the sale or exchange of any real estate, unless the authority for selling or exchanging such land is in writing, and signed by the owner or his authorized agent, or the authority of the broker or real estate agent to make a sale or exchange of such land is recognized in a writing or memorandum signed by the owner or his authorized agent, whether or not such writing or memorandum is signed by said owner or agent before or after such sale or exchange has been effected, and the rate of commission on the dollar shall have been stated therein; provided, however, that any broker or real estate agent who may hereafter be employed by any owner of real estate by oral agreement, to sell or exchange any real estate belonging to such owner, and who shall actually effect the sale or exchange of such real estate pursuant to such oral agreement, before the same shall have been terminated by such owner, in writing, as hereinafter provided, may recover from such owner the amount of commission on such

sale or exchange, provided such broker or agent shall within five days after the making of such oral agreement serve upon such owner a notice, in writing, setting forth the terms of such oral agreement and stating the rate or amount of commission to be paid thereunder, and provided said owner shall not have repudiated or terminated such agreement prior to the actual sale or exchange of said real estate; said owner shall have the right, at any time after receiving such notice, to repudiate or terminate such oral agreement by serving upon such broker or agent a notice, in writing, to that effect, and upon the repudiation or termination of such agreement by the serving of such notices upon such agent or broker prior to the actual sale or exchange of such property by such agent, such agreement shall be null and void and no recovery of any commission shall be had thereunder; provided, however, that if any broker or agent shall have entered into negotiations with a prospective customer in good faith, under such agreement, for the sale or exchange of such property, and such negotiations shall be pending at the time of the repudiation or termination of such agreement by such owner, and such sale or exchange is subsequently consummated between such owner and such customer, such agent or broker shall be entitled to recover his commission on such sale or exchange, notwithstanding the repudiation or termination of such agreement. The notice provided for herein shall be served either personally or by forwarding the same to the person to be served, by registered mail, to the last known post-office address of such person." *P. L. 1918,* chapter 273, page 1020.

It is submitted that in this case, there is only one important question to be decided, that is, whether or not the relation between the parties was that of real estate owner and real estate broker or that of attorney and client. If the relationship was that of attorney and client, then no agreement in writing was necessary to be proved as a part of the plaintiff's case in the Trial Court. If the relation was that of attorney and client, the plaintiff in the Trial Court had an absolute right to recover on a *quantum meruit* for the character of the services rendered. The services rendered were not for advocacy, concerning which the decisions hold that an agreement in advance as to charges is necessary, nor were they services which permitted or required the service of a taxed bill of costs.

The testimony disclosed that the defendant-appellant had been a client of plaintiff, a counselor at law of 19 or 20 years' standing (State of Case, p. 15, lines 3-9), for a period of some five years prior to the time of the transaction on which this suit is based (State of Case, p. 15, lines 28-34).

In this particular case, entry had been made upon lands owned by the defendant-appellant by people that she thought had no right of entry thereon, and she consulted Mr. Westervelt with reference to the matter.

In the performance of his duties as an attorney, both by letter and by telephone and personal interviews, he took care of her interests, and it was subsequently learned that it was the intention of the Port Authority to acquire part of her land as a part of the project of building the great Hudson River Bridge between New York and New Jersey. Mr. Westervelt examined and re-examined the statutes relative to the powers of the Port Authority, and advised his client that unless the property could be sold at a price to be agreed upon between the parties, the Port Authority could take the property by condemnation proceedings (State of Case, p. 19, lines 8-40). A course of negotiations began between the parties in which

Mr. Westervelt's advice was sought from time to time. An offer of $17,500 was made for a part of the property taking in all of the frontage owned by the defendant-appellant (State of Case, p. 25, lines 28-40; p. 26, lines 1-30), and later the Port Authority determined that it would require the entire plot owned by Miss Kunz, amounting to 2.92 acres.

The defendant-appellant had the property appraised by her own appraisers, and they fixed a value of $75,000.00 on it (State of Case, p. 105, lines 13 and 14). The Port Authority began with a figure of $68,500.00 (State of Case, p. 153, lines 17-20) and a sale was finally consummated at $84,000.00 (State of Case, p. 109, lines 24-26). Practically all of the work connected with these negotiations, together with advising Miss Kunz from time to time as to her legal status and rights, passing on the legality of contracts, and finally drawing of deed and closing of title were attended to either by Mr. Westervelt personally or some one acting for him.

There was never any agreement that he should be paid any commission. In fact, nothing was said as to what his bill of services should be until just prior to the execution of the deed conveying the premises involved, when the matter was talked over between Mr. Westervelt and Miss Kunz. Mr. Westervelt was of the opinion that $4,000 was a reasonable amount to charge for the services that had been rendered and were to be rendered in concluding the transaction, and Miss Kunz then agreed to pay that amount.

Under these facts, it seems clear that the transaction was of the usual kind that naturally comes to a lawyer's office in the usual course of practice and that there was not any relationship of real estate broker and agent existing between the

parties. The testimony discloses that the plaintiff-appellee was attending to negotiations for his client in the usual way. There is nothing in the testimony to indicate that the plaintiff-appellee was considered by either himself or by the defendant-appellant in any other relationship than that of attorney and client. His compensation was not to be in the form of commission, nor was it agreed to be based upon the selling price of the property.

Exhibit P-1 (State of Case, p. 122) indicates that the Port of New York Authority wrote directly to Miss Kunz. She brought the letter to her attorney, Mr. Westervelt (State of Case, p. 16, lines 10-20). The letter was brought June 21st, 1927, and on that date Mr. Westervelt wrote Exhibit P-2 (State of Case, p. 123) and Exhibit P-3 (State of Case, p. 124 and p. 17, lines 15-25). They were dictated in the presence of Miss Kunz (State of Case, p. 18, lines 20-23). Mr. Westervelt advised Miss Kunz as to the right of the Port Authority to take the property by condemnation (State of Case, p. 19, lines 10-40). These letters were replied to by Exhibit P-4 (State of Case, p. 125) and Exhibit P-5 (State of Case, p. 126). An examination of the exhibits indicates the trend of the transactions.

This was not the case of a broker procuring a purchaser. The only possible purchaser was the Port of New York Authority. It required the premises in question in its project of building the Hudson River Bridge. Mr. Westervelt was not working as a broker to sell the property. As a lawyer, he was at all times trying to solve the problem of representing Miss Kunz in such a way that she should derive the greatest sum possible for her property—realizing that he would be put in an embarrassing position as between him and

her if by condemnation proceedings Miss Kunz were awarded a smaller sum than some of the various offers that were made from time to time by the Port of New York Authority. In order to take care of her interests properly, he had to advise her as to the law concerning the right of eminent domain (State of Case, p. 19, lines 10-32).

In advising her, the skill with which he represented his client is emphasized by the fact that the appraisers selected by Miss Kunz had placed a value of $75,000 on the property (State of Case, p. 105, lines 13 and 14), while he realized $84,000 for her.

In Exhibit P-11 (State of Case, p. 135), the letter signed by Miss Kunz designates Mr. Westervelt as her attorney, not as her real estate broker. She said (lines 10-15):

> "In view of the fact that I have not as yet come to a conclusion as to the proper value to place upon the property shown on the blue print submitted *to my attorney Mr. Westervelt,*" &c.

Exhibit P-14 (State of Case, p. 139, line 20) indicates the relation of attorney and client. In the letter to Miss Kunz, Exhibit P-22 (State of Case, p. 152, lines 15-25) J. E. Ramsey, the chief executive officer of the Port Authority of New York, in writing to Miss Kunz, used the following language:

> "On August 9th our real estate representative conferred *with your attorney, Mr. Westervelt,* in his office in Hackensack, and made a counter proposal which was confirmed in letter form the same day and which should have reached you on August 10th. After what we considered sufficient time had elapsed for an answer to be received our representative called Mr. Westervelt but with no definite result, and was advised that it would be perfectly agreeable to us to continue negotiations directly with yourself."

At no time did Miss Kunz deny or repudiate the fact that Mr. Westervelt was her attorney. He did not assume to act as broker. He assumed to advise her only in a legal capacity. Many of the letters in the correspondence were directed direct to Miss Kunz and she took them to Mr. Westervelt as her counsel and consulted him with reference to them. Exhibit P-24 (State of Case, p. 154) and Exhibit P-22 (State of Case, p. 151).

This case is plainly distinguishable from the case of *Stout* v. *Humphrey,* reported in 69 N. J. L., page 436, in which there was no prospective customer in sight when the attorney at law in that case accepted employment from the hotel owner mentioned in that case. There a contract for a definite sum was agreed upon to be paid to the attorney if he sold the property. The attorney undertook the advertising of the property in the papers. His compensation was dependent upon bringing about a sale. In that case, the lawyer did just what a real estate broker is expected to do. In the present case, the compensation for services was not dependent upon effecting a sale. If the property had not been acquired, then as a lawyer, Mr. Westervelt would undoubtedly have represented the defendant-appellant in a condemnation proceeding. His advice from time to time as indicated by the testimony, was legal advice. The entire transaction was handled from the legal point of view, including the advice as to trespassers, advice as to the rights of the Port Authority to condemn, passing on the contracts, preparation and execution of deed, and the other incidents that go with the closing of title.

In the case of *Stout* v. *Humphrey, supra,* the

Court found that there was a broker's contract between the parties for the sale of the hotel property in question, that it was not in writing and hence was in violation of the Statute of Frauds and Perjuries. In this case, the plaintiff-appellee does not claim compensation on any such theory. There was no such contract, but he did perform services of the kind usually performed by lawyers and was entitled to recover so much as those services were reasonably worth.

In the case of *Stout* v. *Humphrey, supra,* the attorney found a purchaser and sold the land on account of the owner. In the case at bar, the owner had received a communication from the body that would either purchase or condemn, before the attorney entered upon the scene, but he gave legal advice and direction from time to time. She needed constant advice and assistance, and was in fact averse to signing papers without his approval (State of Case, p. 139, lines 30-38).

In the case of *Stout* v. *Humphrey, supra,* the owner of the property was in the usual position of an owner who wanted to get rid of his property at the greatest price he could obtain. He wanted the agent to find the customer. All he needed was a live real estate broker. In the present case, the owner was obliged to part with title to her property either by voluntary sale or by condemnation proceedings. The purchaser obtruded itself upon the situation and careful legal manipulation was necessary to procure the greatest amount possihle for the owner.

At the very outset, the defendant-appellant needed a lawyer, not a real estate broker. She needed a lawyer's advice and assistance to deal legally with the trespassers who were on her property, and with the customer, the Port Authority, that she could not prevent from acquiring her property in one way or another.

A real estate broker sells property for a willing vendor for such price as the vendor is willing to accept. In this case, the owner was not seeking to sell her property. As counsel advised her, the Port of New York Authority had the right to take. The attorney did not bring about a sale of the property, but he helped his client get the largest price that she could get. This is succinctly indicated by the following questions and answers:

(State of Case, p. 53, lines 18-25):

> "Q. And it was your instrumentality that caused the sale of the property; isn't that so? A. No. It was my instrumentality that caused the price that was paid.
>
> "Q. Well, you procured the Port of New York Authority to buy this property? A. No.
>
> "Q. Isn't that so? A. No."

(State of Case, p. 59, lines 13-18):

> "Q. Well, you wanted to see her sell it? A. No, I didn't care whether she sold it or not, but the Port Authority determined and said in their letter they were going to take it by condemnation."

(State of Case, p. 62, lines 16-25):

> "Q. What was the real nature of your work in this case? What results were you looking for, Mr. Westervelt, in representing Miss Kunz in this case? A. I was endeavoring to see that the Port Authority of New York, or any other person, did no damage whatever to her property without either acquiring the property by an agreement with Miss Kunz, or taking it by condemnation proceedings and paying therefor its full value.
>
> "Q. Yes. And you were looking forward to the time when the property was sold that a good figure was received for it? A. I considered it my duty to see that she got all she could get for the property, yes."

(State of Case, p. 63, lines 25 and 26):

"Q. You were the agent of Miss Kunz? A. I was her attorney. I considered myself so."

(State of Case, p. 64, lines 12-22):

"Q. Yes. So, in the last analysis, you thought the best thing to do was to sell it rather than have it condemned? A. For $84,000.00, I should say yes.

"Q. Yes. Yes. And you were working right along to see that she sold that property and got a good figure for it; isn't that right? A. No, it is not right. I did not care whether she sold it or not. I wanted her to get the best price she could get."

It is submitted that the cases of *Sadler* v. *Young*, 78 N. J. L. 594, and *Sadler* v. *Port-Au-Peck Realty Co.*, 78 N. J. L. 635, cited by the defendant-appellant, have no pertinency to the present case.

In *Malinowsky* v. *Lincoln Developing Co.*, 136 Atl., page 202, the plaintiff was an attorney attempting to enforce a typical broker's contract and under circumstances entirely unlike the facts in the present case.

The testimony as a whole bears out the contention of the plaintiff-appellee that the relationship between the parties was that of attorney and client and not that of owner and real estate broker. Attention is called to the following extracts:

(State of Case, p. 15, lines 28-40, and pages 16, lines 1-3):

"Q. And you had known her for how long before this particular transaction? A. I should say probably for five years; maybe more.

"Q. And in what capacity had you known her? A. As her attorney, I had had several other matters before this.

"Q. Now, coming down to the services in

this case, when did Miss Kunz first consult you in connection with this particular matter? A. On the 21st day of June, 1927."

(State of Case, p. 16, lines 10-23):

"The Court: 1927?

"The Witness: 1927. Miss Kunz came to my office, and she brought with her a copy of a letter that she had received from the Port Authority of New York. She told me that there were some men on her property then, they were cutting down trees, and blasting holes in the rocks, and she wanted it stopped. I asked Miss Kunz that day whether the Port Authority of New York had ever made any advances to her to acquire any part of her property. She said they had not."

(State of Case, p. 16, lines 35-40):

"Q. And where did you get that letter, Mr. Westervelt? A. Miss Kunz brought me that letter.

"Q. And on what occasion? A. That was at the time that she made this call at my office on the 21st of June, and wanted me to stop the trespassing on her property."

(State of Case, p. 19, lines 8-14):

"Q. Well, now, have you outlined all of the conversation that you had with her on that occasion? A. Well, not entirely, because at that same occasion I explained to Miss Kunz that the Port Authority had the right to take her property by condemnation if they so desired."

(State of Case, p. 19, lines 24-40):

"A. (Continuing.) And that, consequently, if they desired to take the property, she could not prevent their taking it, and it would then turn merely upon a question of what they were willing to pay and what she was willing to take, or what a commission would award

in the case of condemnation proceedings. I explained that quite fully to her that day which she was there in the office. I think that was about all that transpired at that particular day; and I told her that I would advise her as to the result of these two letters."

(State of Case, p. 22, lines 1-10):

"Q. Where? A. In my office.

"Q. Yes. These talks that you had with her, were they always at your office here in Main Street? A. No. Some of them were over the telephone.

"Q. Oh, I see. A. She called up quite frequently over the telephone to ascertain how the thing was going along, but that particular letter was discussed very fully in my office with Miss Kunz."

(State of Case, p. 31, lines 14-18):

"Q. I show you a letter of July 15th addressed to Miss Christine L. Kunz and I will ask you where you received that, Mr. Westervelt? A. Miss Kunz brought that letter to me."

(State of Case, p. 31, lines 31-40):

"Q. Now, I show you a letter that bears no date, just 'Monday,' and signed 'C. L. Kunz.' I take it you have seen that letter before? A. Yes.

"Q. And in whose handwriting is that? A. That is Miss Kunz."

(State of Case, p. 32, lines 1-40):

"Q. And did you receive it? A. I did.

"Q. In what way? By mail, or— A. Yes, that came by mail.

"Q. Yes. A. And enclosed that other letter.

"Q. Yes.

"Mr. Zabriskie: And I will offer that in evidence.

"Mr. Friedman: That is from whom?

"Mr. Zabriskie: From Miss Kunz.

"Mr. Friedman: No objection.

"Mr. Zabriskie (reading): 'Monday. Dear Mr. Westervelt: As I did not get speech with you today, I hasten to tell you that on Friday night three men, Mr. Johnson, Mayor of Englewood, Mr. Bogert, tax assessor of Englewood, and Mr. Howells, real estate man, and also in the Fort Lee bank, came to me and said they were engaged by the "P. of N. Y." authority to examine my premises and set a value on it.' And so forth and so forth. 'Which they did. I have made arrangements to have it valued, also, and when that is done will send their statement on to you. Today I received the enclosed.' And the 'enclosed' was a—

"The Witness: That is the prior exhibit.

"Mr. Zabriskie: The prior exhibit?

"The Witness: Yes.

"Mr. Zabriskie (reading): 'Will you acknowledge it, as—and say you will have all speed made to comply with their request,' and so forth. 'Or shall I do so? I do not want to put any statement down in ink.'" &c.

(State of Case, p. 33, lines 1-9):

"I think it is 'hog.' Some 'Brothers is getting things ready. Foley Brothers getting ready so this bridge work begins. Lots of my stuff—have bought a lot of my stuff and given me a good price. The big men of the bridge are here daily. Your very truly, C. L. Kunz.'"

(State of Case, p. 139, lines 18-40 and p. 140, lines 1-6):

"EXHIBIT P-14.

"Monday.

"Dear Mr. Westervelt:

"As I did not get speech with you today I hasten to tell you that on Friday night three

men, Mr. Johnson, Mayor of Englewood, Mr. Bryant, Tax Assessor of Englewood, and Mr. Howells, Real Estate Man and also in the Fort Lee Bank, came to me and said that they were engaged by the Port of New York Authority to examine my premises and set a value on it, etc., which they did. I have made arrangements to have it valued also, and when that is done will send this statement on to you. Today I received the enclosed. Will you acknowledge it and say that you will have all speed made to comply with their request, etc., or shall I do so? I don't want to put any statement down in ink.

"The fence on the S-lot line 955 ft. is almost completed—11 ft. and 3 strands of heavy hog wire on top.

"Foley Bros. (getting things ready so that bridge work begins) have bought lots of my stuff and given me a good price. The big men of the Bridge are here daily.

"Yours very truly,

"C. L. KUNZ, signed."

(State of Case, p. 33, lines 14-25):

"Q. Can you tell about when that was received, Mr. Westervelt? A. Somewhere about the middle of July. It was right after the signing of the consent to put up those—to go ahead with the erection of the wires—

"Q. Yes. A. —across this property.

"Q. And did you write a letter to the Port Authority as requested by her in that letter? A. I did.

"Q. And is this a copy of it, letter dated July 20th, 1927? A. Yes. I dictated that letter."

(State of Case, p. 140, lines 8-27):

"EXHIBIT P-15.

"WARNER W. WESTERVELT, JR.
78 Main Street
Hackensack, N. J.

"July 20th, 1927.

"Port of New York Authority,
75 West Street,
New York City, N. Y.

Attention J. E. Ramsey.

"Your letter of the 15th inst. addressed to Miss Christine L. Kunz has been sent by Miss Kunz to me.

"She wishes me to write you that she is having her property appraised, so as to be in a position to set a price on it within a few days. I will immediately communicate further with you upon receipt of figures from her.

"Yours respectfully,

"W-K WARNER W. WESTERVELT, JR."

(State of Case, p. 33, lines 39 and 40 and p. 34, lines 1-9):

"Q. I show you a letter dated July the 20th addressed to Miss Kunz and signed by you, and ask you where you got that from? A. Miss Kunz returned this letter to me when she came in and consulted me about the matter after the letter was received by her.

"Q. Yes. You sent it to her, and then she came in and gave it back to you with this paper alone or with other papers? A. The other map, I think, came in about the same time."

We have further light thrown on the subject by the discussion between Miss Kunz and Mr. Westervelt on the question of fees at pages 40, 41 and 42, as follows:

"Q. Now then, did you have any talk with Miss Kunz about services and fees? A. Yes.

"Q. Now, will you just tell the jury what that was, Mr. Westervelt? A. Well, the first time fees were mentioned was at the time, or about the time that the Port Authority made the offer of the $80,000.00, and brought in the signed stipulation for immediate possession which is annexed to the blueprint map. At that time—

"Mr. Friedman: May I interrupt, please; may we have the date, approximately?

"The Court: Well, it is on there.

"The Witness: It is on there, the date.

"The Court: Look at the blueprint map; it is in evidence.

"Q. Proceed, Mr. Westervelt. A. At that time, Miss Kunz made the remark to me that she supposed this was running into a lot of money. I laughed and said yes, we were getting into quite a large expense, and she said to me, 'Well, you haven't told me how much you are going to charge me.' I said no, because I didn't know. 'Well,' she said, 'I do not care how much you charge as long as you get it out of the Port Authority,' and I laughed and said there was no way I could get it out of the Port Authority; she would have to pay the bill, and the only way to get it would be to add it to our sale price. Nothing further was said about that until after the contract had been signed. That contract was signed on the 29th day of August, which I believe was on a Monday; but the title was to pass on the 2nd of September, which was a Friday. On Wednesday, in between the 31st of August, I had Miss Kunz come to my office for the purpose of executing the deed, going over the deed, preparing it, and for the purpose of signing an agreement releasing the Port Authority from any damage by reason of what she alleged had been done to her property pending the negotiations. She came over to my office in the morning of that day, and I said to Miss Kunz, 'Now, Miss Kunz, we have got down to

the closing and we know what the price is going to be, and we know what has been done, and I want to discuss with you the charge.' And she asked—I asked her—I put it this way to her: I said, "What do you think ought to be a fair price for these services?' And Miss Kunz said to me, 'Well, whatever you say. You know more about that than I do.' And I said, 'Well, you certainly have an opinion. I think that I ought to charge you $4,000.00.' And we had some little discussion about the $4,000.00, and she wanted to know how I arrived at it. And I said, 'Well, we have had this matter up since the 21st day of June. We have had trespasses, and we have had the erection of the board fence, to which you objected; we have had negotiations, offers made, counter offers, the property appraised by appraisers under my advice, and I have got the Port Authority up on this property from $68,500.00 which was the best offer they had made us voluntarily to $84,000.00,' and I said, 'I think $4,000.00 is a very reasonable proposition.' And Miss Kunz finally said, 'Well, all right, if you think that is so, all right, I will pay it, but can I pay it in instalments'; she says 'I will give you $1,000.00 down now, and $1,000.00 a month until it is paid.' And I said, 'Why, Miss Kunz, I do not see any reason why I should do that. You are getting $84,000.00 cash now, and it is easier to pay now than afterwards.' And Miss Kunz said, 'Well, I have a sentiment about that $84,000.00; I want to put it in the bank in one lump sum.' And I said, 'Well, haven't you any other money? Haven't you any other bank accounts?' She said yes, but she didn't want to lose interest on them; they were savings accounts. 'Well,' I said, 'What is the difference whether you lose interest on what you have got in your savings account, or whether you lose interest on what you are going to deposit?' And she said, finally, 'Well, all right,' she would take it out of one of her old accounts and she would have a check prepared and hand it to me on the

closing so that she could take the check that she received from the Port Authority and deposit it in one lump sum. We agreed on that, and I said, so—so that she would be sure and get the name right on the check, that I would render her—give her a bill that day. I called in one of the young ladies from my office, dictated the bill, had it written up on the typewriter, and handed it to Miss Kunz on the 31st day of August. She took that with her, when we went down and closed the title. After the closing was over, I asked her where her check was. She told me that she had not had time to go to the bank that morning. She would see me the first of the next week, and she has never been in my office since, except on one occasion when the summons had been served upon her."

Attention is further called to the language of Exhibit P-7 (State of Case, p. 129), Exhibit P-10 (State of Case, p. 133), Exhibit P-14 (State of Case, p. 139), Exhibit P-22 (State of Case, pp. 151 and 152).

POINT II.

The plaintiff-appellee is entitled to recover for legal services.

Plaintiff-appellee is suing on a *quantum meruit* for the reasonable value of his services which he claimed to be $4,000. His contention that that was a reasonable amount was proved by testimony of members of the Bar, viz.: Archibald C. Hart (State of Case, p. 45, lines 16-40, and p. 46, lines 1-40, and p. 47, lines 1-10), Wendell J. Wright (State of Case, p. 49, lines 30-39), Clarence Mabie (State of Case, p. 51, lines 27-32), Judge FAKE (State of Case, p. 52, lines 19-21), as well as by the testimony of the plaintiff-appellee himself (p. 43, lines 5-8).

According to the plaintiff-appellee, the defendant-appellant agreed to pay the sum of $4,000 (State of Case, p. 42, lines 1-32). There was an abundance of evidence on which the plaintiff-appellee was entitled to recover in the Trial Court.

The doctrine that there should be an express contract for a specific sum for lawyers' services applies only to counsel fees for advocacy.

POINT III.

The damage and verdict rendered by the jury were correct and according to law and the charge of the Court.

The plaintiff sues for $4,000 with interest from September 2nd, 1927 (see Complaint, p. 5, lines 30-35) and bill of particulars (State of Case, p. 6, lines 12-15).

The jury brought in a verdict of $3,000 with interest at 6%. This amounted to $3,129. The Court charged (State of Case, p. 120, lines 10-14, and lines 16-20):

"The plaintiff is entitled to recover such sum of money as will adequately compensate him for services rendered, taking into account both the time involved and the importance of the transaction in which he was engaged for the defendant.

"It is not necessary in this case that there should be an express contract for a specific sum for the services of the plaintiff; he is entitled to a fair and reasonable compensation for services rendered by him for the defendant."

POINT IV.

The plaintiff was entitled to judgment for $3,129 on his verdict.

The plaintiff-appellee sued for $4,000 with interest from September 2nd, 1927. The plaintiff-appellee testified that the defendant-appellant agreed to pay $4,000.

It is contended that the jury's verdict of "$3,000 with interest at 6%" (amounting to $3,129) was for a definite sum, the interest being a mere matter of calculation.

> "Where a verdict allows interest, but does not compute it, the court may compute it, if it can be done by a mathematical calculation; Miller *v.* Steele, 153 Fed. 714, 82 C. C. A. 572; Martin *v.* Stilliman, 53 N. Y. 615." *3 Bouvier's Law Dictionary 3394.*

It is respectfully submitted that the verdict and judgment of the Bergen County Circuit Court are in all respects legal and should stand.

Respectfully submitted,

WARNER W. WESTERVELT,
Attorney pro se.

JOHN B. ZABRISKIE,
Of Counsel.

New Jersey Court of Errors and Appeals

Warner W. Westervelt, Jr.,
Plaintiff-Appellee,
vs.
Christine L. Kunz,
Defendant-Appellant.

BRIEF OF DEFENDANT-APPELLANT

WARD & McGINNIS and
LOUIS C. FRIEDMAN
Attorneys of Defendant-Appellant.

PETER J. McGINNIS,
Of Counsel.

STATEMENT OF FACTS

This is an appeal by the defendant, Christine L. Kunz, from a verdict and judgment of the Bergen Circuit Court.

The complaint is based upon services rendered the defendant by the plaintiff in connection with the acquiring of certain property belonging to the defendant, by the Port of New York Authority, which resulted in the conveying, by the defendant, to the Port of New York Authority, of her premises, (S. of C., P. 5, l. 10 to 35).

The bill of particulars upon which the complaint is based recites the following: "Professional services in the matter of the acquiring of real estate of the defendant by The Port of New York Authority, conferences, correspondence, prepara-

tion of contracts, approval of proposed options, preparation of notices to quit premises, preparation of deed and the closing of title to the said premises," (S. of C., P. 6, l. 5 to 15).

At the close of the plaintiff's case, the defendant moved for a non-suit on the ground that the facts as presented by the plaintiff's case, were within the Tenth Section of the Statute of Frauds and Perjuries, which motion the Trial Court denied, and to which the defendant took an exception. (S. of C., P. 112, 113, 114 and 115, l. 5. to 20.)

POINT I.

THE PLAINTIFF'S CASE IS WITHIN THE TENTH SECTION OF THE STATUTE OF FRAUDS AND PERJURIES AND HE SHOULD HAVE BEEN NONSUITED.

The plaintiff testified as follows:

"Q. Didn't you say negotiations were pending, and that you negotiated all these conferences? A. I conducted the negotiations, yes.

Q. Yes. And the result of those negotiations was the sale of this property? A. Yes.

Q. And it was your instrumentality that caused the sale of the property; isn't that so? A. No. It was my instrumentality that caused the price that was paid. (S. of C., P. 53, l. 13 to 21.)

Q. Well, they offered something like $17,000.00 in the first instance; isn't that correct? A. Yes. They made an offer of $17,500.00. (S. of C., P. 53, l. 33 to 35.)

Q. Yes. A. For one and five-one-hundredths acres of this property.

Q. Yes. Then you took that price and went to Miss Kunz, didn't you? A. I told her of this offer, yes. (S. of C., P. 54, l. 1 to 5.)

Q. Yes. And then you went after that and you got them up a little higher? A. Not on that piece.

Q. Pardon? A. Not on that piece, we did not.

Q. Well, on the piece that was sold? A. On the whole tract, yes.

Q. Yes. A. Much higher.

Q. You got them up to $84,000.00? A. Yes.

Q. Isn't that so? A. Yes. (S. of C., P. 54, l. 12 to 19.)

Q. You asked for more for her benefit, didn't you? A. I conveyed her price of $100,000.00, yes. (S. of C., P. 54, l. 23 to 35.)

Q. Well, anyway, the Port of New York Authority refused to give $100,000.00? A. That is right. (S. of C., P. 54, l. 34 to 35.)

Q. That is right. And you got them down to eighty-four or up to eighty-four? A. That is right.

Q. And with that figure in mind, which you submitted to them, they accepted it, didn't they? A. Who accepted it?

Q. I say the Port of New York Authority agreed to purchase for $84,000.00? A. That is right. (S. of C., P. 55, l. 1 to 9.)

Q. Well, that was the result of some of

your labors, wasn't it? A. It was the result. (S. of C., P. 55, l. 19 to 20.)

Q. You were instrumental in getting this $84,000.00, weren't you? A. That is true. (S. of C., P. 55, l. 25 to 26.)

Q. Did you ever attempt to get the Port of New York Authority to purchase that property for $100,000.00? A. Well, I submitted her offer to sell for $100,000.00, yes. (S. of C., P. 55, l. 34 to 35; S. of C., P. 56, l. 1 to 2.)

Q. You just submitted it? A. Yes.

Q. Did you argue about it with them? A. That was sent in a letter and declined in a letter.

Q. Did you ever have any conference with Mr. Dudley or Mr. Lanterman or Mr. Ramsay about the $100,000.00 purchase price? A. Yes.

Q. At their New York office? A. No.

Q. At what office? A. My office and over the telephone, both. (S. of C., P. 56, l. 3 to 12.)

Q. Well, you tried to persuade them to pay $100,000.00, didn't you? A. Yes, yes.

Q. And, of course, you tried very hard to make them give eighty-four thousand? A. Well, it took a whole morning.

Q. Yes. A. A little over.

Q. That was the figure submitted by Miss Kunz, wasn't it, eightyfour? A. Eighty-four, no, it was not. I say it was not. I should not say that, because I was not present; but I am informed it was not.

Q. She wanted more? A. I understand she was willing to take less.

Q. Well, she wanted more, didn't she? A. She asked for a hundred thousand.

Q. Yes. Well, you finally got her down to eighty-four, and you got the Port of New York Authority down to eighty-four? A. There was an offer made over her signature of $90,000.00.

Q. Well, I say, finally you got the Port Authority— A. Up to eighty-four. (S. of C., P. 56, l. 16 to 35.)

Q. —of New York to give eighty-four thousand? A. Yes.

Q. And you got Miss Kunz agreeable to accept that? A. That is right.

Q. And then you got the purchaser and the seller together, didn't you? A. Yes, they came together.

Q. And it was through your agency that this sale took place, isn't it, wasn't it? A. I do not know what you mean by agency.

Q. Well, I say, it was through your instrumentality that this contract was executed? A. Yes.

Q. Yes. A. I will say that. (S. of C., P. 57, l. 1 to 15.)

Q. And if it wasn't through your labors and services in this case this contract would never have been executed for $84,000.00, would it? A. I do not think it would.

Q. No. You did all the negotiations? A. Well, Mr. Leslie and Mr. Ellis and myself.

Q. I mean your office? A. Yes; that is right.

Q. Your fee includes their services also? A. Certainly.

Q. You never had a contract in writing about the services? A. No. (S. of C., P. 57, l. 24 to 34.)

Q. Now, are you sure when you say that if it wasn't for your services, this contract would never have been executed and the property never sold? A. I did not say that. (S. of C., P. 58, l. 6 to 9.)

Q. But it would never have been signed for $84,000.00, the contract of sale for this property? A. I do not think it would. (S. of C., P. 58, l. 22 to 24.)

Q. Well, you were instrumental in getting it over; isn't that right? A. I think there is no doubt about that, yes. (S. of C., P. 58, l. 29 to 31.)

Q. Well, whom were you representing? Were you representing the purchaser or the seller? A. I was representing Miss Kunz. (S. of C., P. 58, l. 33 to 35.)

Q. Well, you wanted to see her sell it? A. No. I didn't care whether she sold it or not, but the Port Authority determined and said in their letter they were going to take it by condemnation.

Q. Yes. A. If she would not agree to it, so all I was doing was trying to get them together at the best price I could possibly get for her.

Q. Well, that is what I mean, Mr. Westervelt? A. That is right.

Q. You knew the condemnation proceedings were coming on? A. Yes.

Q. And you wanted to make sure she would get a good price? A. That is right.

Q. And you wanted to see her sell this property and get a good price? A. I wanted to see her get the best price she could.

Q. And then you got them both together, as you said? A. Yes, that is true.

Q. You are sure about that? A. Yes.

Q. You got them both together, the purchaser and the seller? A. That is right. (S. of C., P. 59, l. 13 to 33.)

Q. Did you bring them together? Do you understand that question, Mr. Westervelt? A. I do not know what you mean by bringing them together.

Q. You had them both agree on the purchase price? A. Yes.

Q. And the property to be acquired and the property to be sold? A. Yes. (S. of C. P., 60, l. 27 to 33.)

Q. And the Port Authority of New York told you they would be willing to offer that figure at any time? A. They offered $80,000.00 to me.

Q. They offered that to you? A. Prior to that day.

Q. Prior to that day? A. Prior to that day.

Q. Well, the next day you heard or you found out that they offered $84,000.00? A. No, I never heard that they offered $84,000.

Q. Well, I mean after they offered $84,000.00, you subsequently found that fact

out from someone, or from some person you found that out? A. The $84,000.00 was arrived at at the final negotiations of the contract.

Q. Yes, sir. A. On the day it was signed.

Q. Yes, sir. A. Between all the parties.

Q. Well, I say you found that out, subsequently, (S. of C., P. 61, l. 20 to 35), you found that out? A. Subsequent to what?

Q. To the offer of $80,000 being made? A. Oh, yes, that is right.

Q. Yes. And you persuaded or conferred with Miss Kunz, and told her it would be an acceptable figure for her to accept? A. Mr. Ellis did that, I believe.

Q. Well, your office? A. I wasn't present. I cannot testify to what actually transpired.

Q. Well, your office did that in your absence? A. Mr. Ellis was present when that was done, representing my office, yes.

Q. And finally the contract for that sum was executed? A. Yes.

Q. What was the real nature of your work in this case? What results were you looking for, Mr. Westervelt, in representing Miss Kunz in this case? A. I was endeavoring to see that the Port Authority of New York, or any other person, did no damage whatever to her property without either acquiring the property by an agreement with Miss Kunz, or taking it by con-

demnation proceedings and paying therefor its full value.

Q. Yes. And you were looking forward to the time when the property was sold that a good figure was received for it? A. I considered it my duty to see that she got all she could get for the property, yes.

Q. Yes. And you helped the Port of New York Authority give that figure? A. No. I had nothing—I wasn't advising the Port of New York Authority. (S. of C., P. 62, l. 1 to 35.)

Q. No. But I say you were attempting and trying to make the Port of New York Authority give her a good figure? A. Certainly.

Q. Yes. And when they offered $84,000, you considered that a good figure? A. I do consider that a good figure.

Q. Yes. And you told Miss Kunz to accept it? A. No, I did not, because I was not present.

Q. Well, you told her it was a good figure anyway? A. No, I do not think I even told her that. I do not recall that I told her that myself.

Q. Well, when they offered $84,000.00, didn't you make any comment about that figure to Miss Kunz? A. No.

Q. You did not? A. I wasn't present.

Q. Do you know whether your office did? A. I believe Mr. Ellis, did, yes.

Q. Yes. A. I have been told so since.

Q. All right. Now, you were not the agent of the Port of New York Authority in this case? A. No.

Q. You were the agent of Miss Kunz? A. I was her attorney. I considered myself so.

Q. Well, you were her agent, as far as the selling and buying of this property was concerned, you represented her? A. Yes.

Q. Now, did the Port of New York Authority ever write any letters to you concerning the different prices to be paid for this property? A. Yes.

Q. And you took them up with Miss Kunz? A. Yes.

Q. And then you would write a letter to the Port of New York Authority about it? A. Yes. (S. of C., P. 63, l. 1 to 35.)

Q. Whether that was accepted or disagreeable? A. Yes, on several occasions. (S. of C., P. 64, l. 1 to 2.)

Q. Yes. So in the last analysis, you thought the best thing to do was to sell it rather than have it condemned? A. For $84,000.00, I should say yes.

Q. Yes. Yes. And you were working right along to see that she sold that property and got a good figure for it; isn't that right? A. No, it is not right. I did not care whether she sold it or not. I wanted her to get the best price she could get. (S. of C., P. 64, l. 13 to 21.)

Q. Well, you were trying to see that she got a good price for it? A. Yes. (S. of C., P. 64, l. 31 to 32.)

Q. Do you know who drew the deed up for the sale of the property? A. Yes, I drew a deed. (S. of C., P. 65, l. 14 to 15.)

Q. Now, you say Miss Kunz promised to pay (S. of C., P. 65, l. 35), you $4,000? A. She agreed to pay me that, $4,000, yes, sir.

Q. For your connection with the sale of the property? A. For my services in connection with the matter, yes.

Q. For the sale of the property? A. Yes. (S. of C., P. 66, l. 1 to 7.)

Q. Yes. A. And then they came, Mr. Lanterman and Mr. Dudley came to my office, and in reply to those letters, having first called me on the telephone and made an appointment, and discussed with me whether or not it was possible to acquire the property.

Q. And what did you tell them? A. I told them I would take up with Miss Kunz any propositions they had to make.

Q. As to the sale of the property? A. As to acquiring of the property by the Port Authority. (S. of C., P. 68, l. 19 to 30.)

Q. Yes. Now, when Mr. Dudley and Mr. Lanterman came to your office, how long did you spend with them in conference? A. Well, again, I cannot tell you the exact number of hours. It was practically the whole morning. I think they came in about ten o'clock in the morning, about half past nine or ten o'clock in the morning, and took up the entire morning on that first occasion. (S. of C., P. 69, l. 15 to 22.)

Q. What were you talking about? A. About the use of this property.

Q. About the trespasses? A. About the use of this property for the bridge purposes.

Q. For bridge purposes? A. Yes. (S. of C., P. 69, l. 25 to 29.)

Q. And you asked them what price they had to offer? A. Yes, I think I did in the course of that conversation.

Q. Yes. A. That day.

Q. Why did you ask them that? A. Because they said they wanted to acquire that piece of property.

Q. Yes. But Miss Kunz never authorized you to talk about the purchase of this property at this time, had she? A. Certainly, she had.

Q. At this time? A. Certainly. (S. of C., P. 70, l. 14 to 24.)

Q. And in reply to your letter, Mr. Dudley and Mr. Lanterman came to your office from the Port of New York Authority; is that correct? A. That is true.

Q. You were talking about these trespasses on the property of Miss Kunz? A. We were talking about the acquiring of this property by the Port Authority. (S. of C., P. 71, l. 9 to 16.)

Q. Now, what did she tell you at that time about her property, or anything else? A. She said she was willing they should take it if they paid enough for it. (S. of C., P. 72, l. 19 to 22.)

Q. And what did you tell them when they came there about acquiring this property? A. What did I tell them?

Q. Yes. When they were inquisitive

about the possession of this property? A. I do not think I told them anything. I think they came up with a proposition to buy this property.

Q. Did they give you a figure? A. They did.

Q. And what figure was it? A. $17,500.

Q. And what did you say? A. I told them it was not enough. I would not even submit it to my client.

Q. You would not even submit it to your client? A. No. That is what I told them.

Q. Why not? A. Because it was not enough money.

Q. Well, Miss Kunz never told you to do anything about the purchase price of this property, did she? A. She certainly did, that first day that she was in there.

Q. Well, as I understand you, Mr. Westervelt, Miss Kunz told you that she was willing to sell this property the first time she was in your office, is that right? A. Yes. Yes, she was.

Q. That is right? A. Yes, that is right.

Q. But she never authorized you to talk about what price this property was worth, or anything else about it, outside of the trespasses; isn't that right? A. No. That is not true. (S. of C., P. 74, l. 1 to 30.)

Q. Why did you say to Mr. Lanterman or Mr. Dudley that you would not consider the price of (S. of C., P. 74, l. 35), $17,500? A. Because it was not enough money for

that piece of property, in my opinion. (S. of C., P. 75, l. 1 to 2.)

Q. Did Miss Kunz tell you to ask for any price for the property? A. Certainly. (S. of C., P. 75, l. 3 to 4.)

Q. Well, the first time she was in your office, did she mention any figure to you about the sale of this property? A. Yes.

Q. What figure did she say? A. Well, the first day that she was in there and I asked her what she thought the property was worth, Miss Kunz said she thought it might be worth $50,000.00.

Q. $50,000.00? A. Yes.

Q. Are you sure about that? A. Yes. (S. of C., P. 75, l. 18 to 27.)

Q. All right. Now, when Lanterman and Dudley told you they would offer $17,500.00, you said it was not enough? A. That is right.

Q. You would not even submit it to your client? A. That is right.

Q. Now, when Miss Kunz was in your office the first time, did she ask you to get any figure for her on that property? A. Why, yes. (S. of C., P. 76, l. 13 to 20.)

Q. But she gave you no authority to pass upon any figure for the purchase of this property, did she? A. She retained me to look after her interests in this negotiation. (S. of C., P. 77, l. 8 to 11.)

Q. Now, when is the second time she was in your office? A. Well, I cannot tell you the exact date it was. I think it was the day following the call of Mr. Lan-

terman and Mr. Dudley. I think it was the very next day she was in my office.

Q. And they are from the Port of New York Authority? A. That is right.

Q. And what took place the second time? A. Well, I told her that they had been in my office, that they had made me an offer of $17,500.00, and that we could get—in my opinion, we could get a great deal more than that; and I had told them I wouldn't even submit it to her, they would have to come up. (S. of C., P. 77, l. 18 to 32.)

Q. Was Miss Kunz at your office at that time when Mr. Dudley and Mr. Lanterman were at your office? A. On that first occasion that they were there, you mean?

Q. June 28th. A. I do not think she was, no.

Q. She was not? A. I do not think so. I am not sure about it, but I do not think so. She was there on one occasion and refused to see them. She was sitting outside waiting for me. She came in and she said she refused to talk to them, that I could conduct the negotiation, and she went out my private entrance, and left them sitting outside. What day that was, I could not tell.

Q. She said you could conduct the negotiations? A. With them.

Q. With them? A. Yes.

Q. For what? A. The acquiring of this property.

Q. For the purchase and selling of this property? A. For the acquiring of this property.

Q. For the acquiring of this property by the Port of New York Authority? A. That is right.

Q. Are you sure about it? A. Yes. (S. of C., P. 79, l. 3 to 25.)

Q. Did you negotiate with Mr. Dudley for the acquiring of this property? A. I did on that occasion, yes. (S. of C., P. 79, l. 31 to 35.)

Q. Now, you said something about Mr. Dudley offered some money the second time you spoke to him for the acquiring of this property? A. Why, yes; they made — they made an offer of $80,000.00.

Q. That was the second occasion? A. No. I would not say it was the second occasion.

Q. Well, it was one of the occasions? A. It was at the time that this agreement that it now marked in evidence was made. It was the day—I think the day prior to the date of the execution of that, that Mr. Dudley and I discussed it.

Q. It was $80,000.00? A. Yes.

Q. And you took that up, that matter, with Mr. Dudley? A. Mr. Dudley called me on the telephone.

Q. Yes. Well you discussed that— A. We did.

Q. —matter with him? A. Yes.

Q. The purchase price? A. That is right.

Q. You discussed that with him? A. Yes, that is right.

Q. And for what purpose? Why did

you discuss purchase price with Mr. Dudley, about this property? A. Well, Mr. Dudley, for and on behalf of the Port Authority, made us an offer of $80,000.00.

Q. Made who an offer? A. Miss Kunz, through me.

Q. Yes. A. That is right.

Q. For the purchase of this property. And what did you say? A. I said I would submit it to Miss Kunz.

Q. And did you? A. I did.

Q. And then what happened? A. Well, Miss (S. of C., P. 82, l. 3 to 35), Kunz did not want to decide right offhand whether she would take it or would not.

Q. You were interested at that time, then, in settling a definite price for the purchase of this property, weren't you? A. Exactly. And I advised her then that she had better take eighty thousand, because if she did not take it, I was afraid she would not get nearly so much.

Q. And you were interested in seeing that the Port of New York Authority gave her a good price for that property? A. Certainly.

Q. And you wanted to see her get it? A. That is right.

Q. And you tried to get the Port of New York Authority to give her a good price; that is right? A. That is right.

Q. And you were instrumental in having the Port of New York Authority give her a good price for that property? A. I

think I have said that about five times now. (S. of C., P. 83, l. 1 to 21.)

Q. You did not go to New York with Miss Kunz? A. No. I returned to my office on Saturday the 29th of August. The day this contract was signed was Monday, and when I came into my office there was a note on my desk. Mr. Ellis had left word that he had gone down with Miss Kunz. If I got in in time, to come down to New York. I immediately called up the Port Authority and told them that there was no need of my coming down; Mr. Ellis was perfectly all right to handle it, and to go on and negotiate the thing with him.

Q. Yes. A. And I did not go down to New York that day.

Q. And Mr. Ellis is employed by you? A. He did that for me, yes." (S. of C., P. 85, l. 8 to 22.)

John Steward Dudley, a witness for the plaintiff, testified as follows:—

"Accordingly, with Mr. Lanterman, who is a real estate agent of the Port of New York Authority, and in charge of the acquisition of the property, we went, on an appointment, to Mr. Westervelt's office in Hackensack, and there had a discussion with him. (S. of C., P. 95, l. 29 to 34.) He had some conversation with Mr. Lanterman about the price, and I think Mr. Lanterman made him an offer, which he said he would submit to Miss Kunz, and we thereupon left, expecting to hear from him.

(S. of C., P. 96, l. 12 to 16.) And I had some other conversations, and I think Mr. Lanterman did, with Mr. Westervelt, asking for some kind of an issue on price, so that we could do one thing or the other and get started. (S. of C., p. 96, l. 20 to 23.) I think Mr. Lanterman came back with some modifications that Mr. Westervelt had suggested, which I read over. I do not remember that I found any particular fault with them, and agreed. We continued to press Mr. Westervelt for some kind of a definite answer about the thing one way or the other, until we were finally informed that he had gone away on his vacation, and Mr. Ellis was in charge. I cannot tell you directly just how Mr. Ellis happened to come to the office with Miss Kunz, but on the 29th of August, we had a conference in the office of Mr. Ramsay at which I was present, which lasted most of the morning, and resulted in our agreeing—an agreement that the property was to be sold for $84,000.00. I drew a first draft of an agreement after discussing the terms with Mr. Ellis, and he called up Mr. Westervelt, and we made some changes in it; and sometime that day the contract was signed. We, following that, had some discussions with Mr. Westervelt's office about how the closing should be managed, and on the 2nd of September, we had a closing in my office; the deed was passed, and the matter closed up. (S. of C., P. 97, l. 9 to 32.)

Q. In your negotiations, Mr. Dudley, in connection with this matter, did you treat with anybody else other than Mr. Ellis and Mr. Westervelt? A. No, sir. (S. of C., P. 99, l. 5 to 9.)

Q. And Mr. Ellis was representing Mr. Westervelt, attorney for Miss Kunz, at the time? A. We so understood, yes. (S. of C., P. 99, l. 20 to 22.)

Q. And you were there representing the Port of New York Authority? A. Yes, sir.

Q. And these conferences were about the purchase price of the property? A. Well, they concerned all the matters that I have discussed.

Q. Yes. And part of those matters was the purchase price of this property? A. Naturally.

Q. Yes. And the other terms, about the moving out on a certain day? A. Yes.

Q. And about the shanty? A. Yes.

Q. With the house on the premises? A. Yes.

Q. And Mr. Westervelt was there negotiating for the sale and the purchase of this property with you or with Mr. Lanterman or with Mr. Ramsay? A.. He was there representing Miss Kunz. (S. of C., P. 100, l. 21 to 34.)

Q. Yes. And that was about—he was negotiating about the purchase and selling of this property? A. He talked about the price, necessarily.

Q. Well, it was about the sale and the purchase, wasn't it, Mr. Dudley? A. He

came over to get the matter disposed of.

Q. Now, was it or was it not about the sale and the purchase of this property? A. That, with other things. (S. of C., P. 101, l. 1 to 9.)

Q. I just want to ask one question more. At that last time when Mr. Ellis came over, by whom was he accompanied? A. He was accompanied by Miss Kunz.

Q. Miss Kunz was there herself. Did she participate in the discussion, or did she leave that to Mr. Ellis? A. She talked, but I think we directed most of our questions and answers to Mr. Ellis as her spokesman."

Mr. William E. Ellis, witness for the plaintiff, testified as follows:—

"Q. Mr. Ellis, you are a member of the bar? A. Yes, sir.

Q. And you are the Mr. Ellis who accompanied (S. of C., P. 107, l. 33 to 35) Miss Kunz at the time the deed was delivered? A. No. (S. of C., P. 108, l. 1 to 2.)

Q. Or, at least, the contract was prepared? A. I met her there, on the Monday before the deed was delivered.

Q. Yes. A. I met Miss Kunz at the Port Authority office, 79 or 90 West Street, 75, I think it was.

Q. And did you conduct the negotiations? A. Yes. (S. of C., P 108, l. 3 to 10.) And we finally talked about the matter quite some time, and during the time,

why, Miss Kunz and I went in an outer room and talked matters over; and finally, during the course of the meeting, I raised their figure to $82,000.00. And then Miss Kunz wanted to know if she could see me. So we went out in the outer room and talked the matter over, and she (S. of C., P. 108, l. 29 to 35), told me at that time—she said, 'Well you have got them up to eighty thousand now, I am satisfied,' she says, 'you can close it if you want to.' 'Well,' I said, 'of course, it is up to you, whatever you say.' 'Well,' she says, 'What do you think?' 'Well,' I says, 'I might be able to get them up to eighty-five thousand.' At that time we were asking ninety-five thousand. And I suggested to her that we drop our figure from ninety-five thousand to ninety thousand, and as I thought by doing that, we might be able to split the difference between eighty ninety and get eighty-five. 'Wel,' she says, 'use your own judgment.' 'But,' she says, 'you have got them up to the eighty thousand; I am satisfied; so do as you like, do as you think best.' 'Well,' I says, 'it is up to you; you are the one to be satisfied.' 'Well,' she says, 'go on, get all you can.' So we went back and continued the meeting, and I finally raised them to eighty-four thousand; I was trying to get the eighty-five, and they flatly said they would not go above the eighty-four, and I said, 'Well, I do not know whether Miss Kunz will accept that or not. I will have to talk to her now.' And I

asked her in the presence of all of them, and she said she was satisfied, and we closed at $84,000.00. (S. of C., P. 109, l. 1 to 26.)

Q. You were there representing Mr. Westervelt? A. I was taking care of the matter for Mr. Westervelt because he was on his vacation. (S. of C., P. 109, l. 31 to 33.)

Q. And you helped her get that eighty-four thousand? A. I was representing her, yes.

Q. Well, I say, you helped her get eigthy-four thousand? A. I was helping her get all she could.

Q. Yes. You did not care how much you got from the Port of New York Authority as long as you got enough for your client; that is right, isn't it? A. The only thing I cared about was her. I was representing her, and she said that she wanted a hundred thousand.

Q. Yes. A. That was the figure I started out with, and taking her own figure.

Q. And through your agency, the matter was closed for $84,000.00, is that right? A. I would not say through my agency.

Q. Through your instrumentality? A. No.

Q. Through your efforts? A. No. That wasn't closed at eighty-four thousand through my efforts.

Q. You turned down $80,000.00? A. Why, in other words, we kept them agoing.

Q. Pardon? A. Going up.

Q. What is that? A. I say, in other words, we kept them going up, kept them agoing.

Q. Yes. You turned down $80,000.00? A. I did not turn it down.

Q. It was not enough. Well, did you advise Miss Kunz that you were going to try to get more (S. of C., P. 110, l. 10 to 35) for her? A. When Miss Kunz went out with me in the outer room, she said she was satisfied, then, that she—I had them over the eighty thousand.

Q. Yes. And then, did you— A. And I told her I thought we might possibly be able to ge some more.

Q. And when you said you might get some more, you meant you might get some more from the Port of New York Authority? A. No, I meant her; I wasn't getting anything.

Q. She was satisfied with eighty, wasn't she? A. She wanted me to get all I could for her." (S. of C., P. 111, l. 1 to 13.)

See Exhibit P. 7, S. of C., P. 127, l. 20 to 35, where the Port of New York Authority wrote a letter to the plaintiff in this case, stating the following in the second paragraph:

> "I understand that Mr. Dudley and Mr. Lanterman of our Legal and Real Estate Departments have conferred with you upon the matter or purchase of the necessary property as well as the conditions under

> which the owner will permit the Port Authority to prosecute the necessary work."

See also in Exhibit P. 7, on P. 129, l. 15, third paragraph, in which letter the Port of New York Authority said to the plaintiff:

> "I believe Mr. Lanterman made a definite offer to Miss Kunz through you, of seventeen thousand five hundred dollars ($17,500) for the area delineated on map HBB-S48. This I understand is consistent with prices paid for comparable property in the immediate neighborhood and I trust that you have been able to persuade Miss Kunz to accept it or to indicate the lowest price that she will accept. Should it develop that your client would prefer to dispose of the entire area comprised in lots 23 and 24 in block 153 it is just possible that we might find a way to aid her, providing she places a reasonable figure on it."

And on line 30 on the same page:

> "Will you not help us by persuading your client to an immediate decision, likewise in view of the fact that this area must be acquired immediately either through friendlly private negotiations or through condemnation action if negotiations fail."

See Exhibit P-19, on page 148, S. of C., which is a letter addressed to the plaintiff, by the Port of New York Authority, wherein it shows that the Port of New York Authority thought the price of $100,000.00 asked for was excessive, and

where they offered the plaintiff $80,000.00 for the premises of his client.

See also Exhibit P-20, where the plaintiff turned down a $10,000.00 check offered by the Port of New York Authority, as an initial payment pending the final offer.

The Tenth Section of the Statute of Frauds and and Perjuries, Chapter 273, Laws of 1918, page 1020, provides as follows:

> "No broker or real estate agent selling or exchanging land for or on account of the owner shall be entitled to any commission for the sale or exchange of any real estate, unless the authority for selling or exchanging such land is in writing, and signed by the owner or his authorized agent, or the authority of the broker or real estate agent to make a sale or exchange of such land is recognized in a writing or memorandum signed by the owner or his authorized agent, whether or not such writing or memorandum is signed by said owner or agent, before or after such sale or exchange has been effected, and the rate of commission on the dollar shall have been stated therein; provided, however, that any broker or real estate agent, who may hereafter be employed by any owner of real estate by oral agreement, to sell or exchange any real estate belonging to such owner, and who shall actually effect the sale or exchange of such real estate pursuant to such oral agreement, before the same shall have been terminated by such owner, in writing, as hereinafter provided,

> may recover from such owner, the amount of commission on such sale or exchange, provided such broker or agent shall within five days after the making of such oral agreement serve upon such owner a notice in writing, setting forth the terms of such oral agreement and stating the rate or amount of commission to be paid thereunder, and provided said owner shall not have repudiated or terminated such agreement prior to the actual sale or exchange of said real estate."

The Court will readily see from the above quotations of Section 10 of the Statute of Frauds, as far as is applicable to this case, that the plaintiff, Warner W. Westervelt, Jr., failed to have any written contract from the defendant, Christine L. Kunz, who was the owner of the premises, for the sale of the property which was conveyed to the Port of New York Authority. The plaintiff also failed to have any memorandum signed by the owner. The plaintiff also failed to have the rate of commission on the dollar stated in any memorandum or writing signed by the owner.

Assuming, however, for the sake of argument, but in no wise conceding the same, that there was an oral agreement between the plaintiff and the defendant, that the plaintiff should sell the defendant's premises to the Port of New York Authority, yet the plaintiff cannot recover for his services, because he failed, within five days after the making of the oral agreement, to serve upon the owner a notice in writing, setting forth the terms of the oral agreement, and stating the

amount of commission to be paid thereunder. Assuming, for the sake of argument, but in no wise conceding the same, that negotiations were pending between the prospective customer and the plaintiff in good faith under the oral agreement, had between the plaintiff and the defendant for the sale of her property, that in no way would entitle the plaintiff to recover, because under that part of the Tenth Section of the Statute of Frauds, it would be necessary for the plaintiff to have served written notice upon the defendant within five days, setting forth the terms of the oral agreement and the amount of commission to be paid thereunder, so that the owner of the premises could repudiate the oral agreement pursuant to the written notice served upon her, and notwithstanding such repudiation or termination of the oral agreement by the defendant, yet the plaintiff could recover pursuant to such oral agreement if negotiations with the prospective customer in good faith, were pending at the time, for the sale of the defendant's property, if the plaintiff at the time served written notice upon the defendant of the terms of the oral agreement and the rate of commission on the dollar were stated, and since the plaintiff failed to serve such notice, he cannot recover under that part of the Tenth Section of the Statute of Frauds, which provides for notice setting forth the terms of the oral agreement and the rate of commission on the dollar, because he failed to comply with a condition precedent which was incumbent upon him to perform before he could recover under that Section.

There can be no dispute but that the plaintiff,

even though he is a lawyer and specified his services as legal services for the defendant, still he performed not legal services but services in the nature of a real estate broker or agent. The plaintiff classifies his services as services rendered the defendant in conection with the acquiring of certain property belonging to the defendant, by the Port of New York Authority, which resulted in the conveying by the defendant, to the Port of New York Authority, of her premises (S. of C., P. 5, l. 10 to 35).

The Court can readily see from the framing of the complaint, that the plaintiff is attempting to shield his agency as a real estate broker, and camouflage the same into services as an attorney. If the plaintiff's services were strictly professional services as an attorney, why should the complaint recite "which resulted in the conveying by the defendant to the Port of New York Authority of her premises?" (S. of C., P. 5, l. 25.) If the plaintiff's services were strictly professional as a lawyer, what difference would it make so far as his compensation was concerned, whether his services resulted in the conveying by the defendant of her property, to the Port of New York Authority? The fact that the complaint states "which resulted in the conveying by the defendant, to the Port of New York Authority, of her premises," shows beyond a doubt, that the plaintiff was seeking fees and commissions for his services, because due to his ability as a real estate broker, his agency in representing the defendant resulted in success, and effected the sale from the defendant to the Port of New York Authority, of her premises.

The plaintiff, in his bill of particulars, is astute enough not to base his services in the matter of the sale of the defendant's property, to the Port of New York Authority, but recites the same as "Professional services in the matter of the acquiring of real estate of the defendant, by the Port of New York Authority." In other words, no matter how the plaintiff words his complaint, or his bill of particulars, it is very easy to observe that he is attempting to word the same, so it should not be within the Tenth Section of the Statute of Frauds and Perjuries, but no matter what words he uses to describe his services, it boils down to a point where he rendered services in connection with the selling of real estate of the defendant, whom he represented, to the Port of New York Authority.

The Court can readily see through the plaintiff's entire testimony, where he testified that he conducted all the conferences, and that his instrumentality caused the sale of the property. That he conducted the negotiations and the result of the same were the sale of the defendant's property to the Port of New York Authority; that his instrumentality caused the price that was paid; that he dickered as to price; refused prices that were offered to him all the way from $17,500.00 to $84,000.00; that he asked for more money for his client's benefit; that finally he got the purchaser up to $84,000.00; that all these things were the result of his labors; that he was instrumental in getting this $84,000.00; that he tried to get $100,000.00 for his client, and wrote a letter about it, in which his figure was declined; that he had conferences with Mr. Dudley, Mr.

Lanterman and Mr. Ramsay, representing the Port of New York Authority, about the purchase price, and the defendant's property, at his office, and over the telephone, and that he tried to persuade them to pay $100,000.00, and worked very hard to get $84,000.00, and that he got the defendant, Miss Kunz, agreeable to accept that sum, and that he got the purchaser and seller together, and that it was through his instrumentality that the contract was executed. (S. of C., P. 57, l. 1 to 15.) That if it wasn't through his labors and services, the contract would never have been executed for $84,000.00. (See S. of C., P. 57, l. 24 to 34.) That he was instrumental in getting it over. (S. of C., P. 58, l. 29 to 31.) That he got the purchaser and seller together. (S. of C., P. 59, l. 13 to 33.) That he had them both agree on the purchase price, and the property to be acquired, and the property to be sold. (S. of C., P. 27 to 33.) The plaintiff testified further, he was the agent of the defendant, Miss Kunz, and as far as the selling and buying of her property was concerned, he represented her. (S. of C., P. 63, l. 1 to 35.) The plaintiff attempts to say that the defendant agreed to pay him $4,000.00 for his connection and services in the sale of her prpoerty. (S. of C., P. 66, l. 1 to 7.)

The plaintiff's own witness, Mr. Dudley, representing the Port of New York Authority, testified that the conferences he had with the plaintiff, Warner W. Westervelt, Jr., were about the sale and the purchase of the defendant's property, with other things. (S. of C., P. 101, l. 1 to 9.)

See also the testimony of William E. Ellis, the plaintiff's witness, who represented the plaintiff

at the closing of the title, and how he dickered about the price, and other things for the benefit of the defendant, on page 108, 109, 110 and 111 of the state of case.

In the case of Stout v. Humphrey, reported in 69 N. J. L., p. 436, the Court of Errors & Appeals, through Mr. Justice Vroom, said in the first syllabus:

> "The Tenth Section of the Statute of Frauds, which provides that no broker or real estate agent, selling lands on account of the owner, shall be entitled to receive any commission for such sale, unless the authority for selling is in writing, signed by the owner or his authorized agent, is aimed at, and applies to, any person who acts as broker or real estate agent in the very transaction out of which the claim for compensation arises."

In that case a lawyer also attempted to recover for legal services, disbursements and traveling expenses in and about the sale of his client's property, and the Court held he was not entitled to the same. Mr. Justice Vroom, on page 440, of his opinion, in the second paragraph, said:

> "The learned trial judge, we think, tersely and correctly interpreted this Section of the Statute when he said: 'But, as I read the Statute, both in its letter and manifest policy, it is aimed at any person who acts as broker or real estate agent, in the very transaction in question out of which the claim for compensation arises. It would be a very narrow construction of the Statute to say that it applied only to him

> who ostensibly and usually carried on the business of brokerage or a real estate business so-called'."

And in the next paragraph the learned Justice said:

> "A broker is defined to be 'a middleman or agent, who, for a commission or rate per cent, on the value of the transaction, negotiates for others the purchase or sale of stocks, bonds, commodities, or property of any kind, or who attends to the doing of something for another'." Cent. Dict.

Now, if according to Mr. Justice Vroom's opinion, a broker is a middleman or agent, who negotiates for others, then the plaintiff in the case sub judice comes under the definition of a broker, as given by Mr. Justice Vroom, because the plaintiff, through his testimony, testified that he conducted the negotiations, and that the result of these negotiations was the sale of the defendant's property. See S. of C., P. 58, l. 13 to 21. The word "negotiation" means nothing more than a tool or means by which an act is done, and if the plaintiff conducted the negotiations, and the result of the negotiations was the sale of the defendant's property, then he was a tool or means by which the defendant's property was sold, and comes within the case of Stout v. Humphrey as a broker or real estate agent, and cannot recover under the facts in his case.

And in Stout v. Humphrey, supra, on page 441, five lines from the top of the page, Mr. Justice Vroom, said as follows:

"But conceding that the attorney does not cease to be such when his employment is a service not strictly professional, and, as in this case, was that of a broker or real estate agent, the mere fact that he is an attorney will not relieve him from the provisions of the Statute, which require the written authority of the owner for the sale or exchange of land before he will be entitled to any commissions for such sale or exchange."

And on page 441, second paragraph, Mr. Justice Vroom said as follows:

"Again, the plaintiff contends, that the defendant in this case did not give his attorney any power or authority to sell his property; that his only employment was to aid him in making a sale of the property. The effect of this would be to limit the operation of the section to those who have the authority to sell the property and bind the defendant by the contract. That would be, indeed, but a narrow construction of the terms 'selling or exchanging,' and exclude all who negotiate sales, seek purchasers and secure them, as is customary with real estate agents and brokers, and for which services commissions are always charged and allowed. I concur with the views of the trial judge that 'a construction which would take out of the statute all persons except those who are empowered to sell, in the sense of carrying the sale into effect, would defeat the purpose of the statute'."

To the same effect are the cases of Sadler v. Young, 78 N. J. L., p. 594 nad Sadler v. Port-Au-Peck Realty Co., 78 N. J. L., p. 635, and a very recent case on the same is Malinowsky v. Lincoln Developing Co., 136 Atl., p. 202, where the case of Stout v. Humphrey was cited with approval. In the Malinowsky case, a lawyer also attempted to recover commissions on a real estate transaction, under the cloak of legal fees, but the Court held his services were in the nature of a real estate broker and he could not recover.

POINT 2.

THE DEFENDANT DID NOT HAVE TO PLEAD THE STATUTE OF FRAUDS AND PERJURIES IN HER ANSWER TO GET THE BENEFIT OF IT, IF HER ANSWER DENIED ALL THE MATTERS SET FORTH IN THE COMPLAINT.

The Court was of the opinion that the defendant should have pleaded the Statute of Frauds and Perjuries in her answer, before she was entitled to the benefit of it, and that if she didn't raise the Statute of Frauds in her answer, then of course, she was not entitled to raise the same during the trial. See P. 114, S. of C., l. 1 to 8.

"The Court—No. Let me point out something to you. If I remember the Practice Act, it implies if there be a defense of illegality, Statute of Frauds, or any other matter likely to cause surprise, it is no defense unless it is pleaded. Now, you have generally denied this. You have not raised the Statute of Frauds in your answer."

See also on the same page, l. 19 to 22, where the Court said:

> "The Court—Why do you suppose they included each as part of the Practice Act if they did not intend that if you raise those special defenses you had to plead them?"

The Court denied the defendant's motion for a nonsuit, and the ~~plaintiff~~ defendant took an exception to the same. (S. of C., P. 115, l. 19 to 20.)

Vice-Chancellor Stevenson, in the case of Loziar v. Hill, 68 N. J. Eq., p. 300 at p. 305, last paragraph, said the following:

> "The answer does not set up the Statute of Frauds as a defense, but it denies that Mr. Kipp ever made any promise to devise the land to the complainant. Upon such an answer the defendant has the full benefit of the Statute of Frauds as a defense."

And cites the following cases:

Van Duyne v. Vreeland, 12 N. J. Eq., p. 142.

Walker v. Hill's Executors, 21 N. J. Eq., p. 191, 202, 203; S. C., 22 N. J. Eq., 513, 519 (Court of Errors & Appeals).

McKee v. Griggs, 51 N. J. Eq., p. 178, 184.

Wakeman v. Dodd, 27 N. J. Eq., p. 564, 565.

Busick v. Van Ness, 44 N. J. Eq., p. 82, 84.

And in the case of Owen v. Riddle, 81 N. J. L., p. 546, second syllabus, Mr. Justice Minturn, speaking for the Court of Errors & Appeals, said:

> "In an action on contract a defense whose plea denies the contract has the benefit of the Statute of Frauds without specially pleading it."

And on page 547 of the opinion, third paragraph, the Court said:

> "The Trial Court refused a nonsuit, and this refusal, it is claimed, was error, because it is asserted the defendant was not the owner of the farm nor the duly authorized agent of the owner within the intent of the tenth section of the Statute of Frauds. It is said that this contention is not supported by any plea which interposes the Statute as a bar to the action. Such plea was not necessary. The Statute of Frauds is a rule of substantive law, not of pleading; hence, when the plea of non-assumpsit requires the plaintiff to prove a contract enforceable at law, the defendant has the benefit of the Statute without having specially pleaded it. A collection of authorities illustrative of the application of this doctrine in practice is presented in Walker v. Hill's Executors, 6 C. E. Gr. 191; S. C., affirmed in 7 Id. 513; Wakeman v. Dodd, 12 Id. 564."

And in the case of Ziegener and Lane v. Daeche, 91 N. J. L., on p. 634, Mr. Justice Bergen, speaking for the Court of Errors & Appeals, said in the syllabus:

> "Where a defendant admits in his plea or answer the making of the promise or agreement sued on, which is within the

> Statute of Frauds, he must plead the Statute if he wishes the benefit of it, except where the plaintiff's complaint or declaration of his cause of action discloses a case within the Statute. He must either deny the contract, or, admitting it, plead the Statute if he wishes to avoid the contract for that reason."

This case was decided subsequent to the passing of the Practice Act of 1912.

And in the case of Hill's Executors v. Walker, which went to the Court of Errors & Appeals, 22 N. J. Eq., p. 513, at p. 519, second paragraph, the Court held:

> "The defendants having denied the existence of any agreement whatever with respect to the purchase of the lands, are entitled to the benefit of the Statute of Frauds without pleading it as a defense. The effect of a total denial of any contract is to put the complainant to proof of the trust, by legal and competent evidence, which by the Statute is required to be in writing."

Citing the cases of Van Duyne v. Vreeland, 1 Beas. 150; Whyte v. Arthur, 2 C. E. Green 521.

In the case of Douma v. Powers, 92 N. J. Eq., p. 25, in the fifth syllabus, the Court said:

> "If the defendant files an answer simply denying the contract set forth in the bill was in fact made, he has the full benefit of the Statute as a defense at the hearing.

> The denial of the contract casts upon the complainant the burden of legally proving his contract."

This case reviews the authorities on the point of pleading the Statute of Frauds and Perjuries and is an opinion by Vice-Chancellor Stevenson.

The defendant in her answer denied all the matters set forth in the plaintiff's complaint, and also in her answer, gave written notice that she would object, at the time of the trial of the cause, to the complaint, on the ground that it did not set forth a cause of action. (S. of C., p. 8.) Therefore, the defendant having denied the plaintiff's services and contract, whether it was expressed or implied, and having raised a legal objection in the pleadings as to the sufficiency of the same, as a matter of law, she was entitled to plead and raise the Statute of Frauds, at the time of the trial, without raising the same in her pleadings, and the Trial Court committed error in holding otherwise.

POINT 3.

THE PLAINTIFF CANNOT RECOVER FOR LEGAL SERVICES.

There is no evidence in the case to show what legal services the plaintiff rendered to the defendant, outside of drawing the deed, and examining the contract for the sale of defendant's property. But the plaintiff testified in submitting his bill for $4,000.00, that he thought that was a reasonable charge for everything he had done. He testified as follows:

"Q. Well, can you tell us, approximately, Mr. Westervelt, how many hours you spent on this case? A. No, I cannot; I do not know. (S. of C., P. 86, l. 33 to 35.)

Q. Can you tell us what was your charge for these conferences with Mr. Dudley on these two occasions? A. No, sir. I made no separate charge for any one conference.

Q. Did you add these different occasions up, the conferences, writing the letters, in making your four-thousand-dollar bill? A. I went over what I had done with Miss Kunz, and told her I thought $4,000.00 was a reasonable charge, and she said she agreed with me.

Q. The whole thing? A. Yes." (S. of C., P. 87, l. 1 to 12.)

The plaintiff's complaint is based on a quantum meruit for services rendered and demands $4,000 as a reasonable sum. (See S. of C., P. 5.) But the plaintiff testified, that the bill of particulars annexed to the complaint upon which those services were rendered, is based upon a contract for which he seeks $4,000.00. See his testimony:

"Q. Well, she agreed to pay you $4,000 for the services rendered? A. That is right.

Q. That is correct? A. Yes.

Q. And this bill of particulars is based on those services? A. It is based on services; it is a statement of those services.

Q. Yes. A. Yes, that is right.

Q. For which the suit of $4,000.00 is being brought? A. That is right." (S. of C., P. 92, l. 9 to 17.)

The Court can readily see that from the above, the plaintiff's demand for $4,000.00 is composed of services which are strictly professional as contra-distinguished from unprofessional services, and that those services which are strictly professional, cannot be segregated from those services which are professional according to the plaintiff's own testimony, and that the combination of both those services were worth $4,000.00, and which the plaintiff testified the defendant promised she would pay. The plaintiff's bill of particulars being based upon a contract to pay $4,000.00, which were based on his services, which were strictly professional, as contra distinguished from unprofessional, and his complaint being on a quantum meruit and asking for $4,000.00 damages as a reasonable sum for his services, he, the plaintiff, cannot recover because the complaint and bill of particulars are inconsistent, and the services under his complaint, and those alleged in the bill of particulars are both joined together in an indivisible contract, and that if one part of his services, which were professional, were joined in an indivisible contract, and in one count, with another part of his services, which were unprofessional and obnoxious to the Statute of Frauds, he cannot recover for either of his services, whether strictly professional or unprofessional.

The Court said in the case of Stout v. Humphrey, 69 N. J. L., p. 444, last paragraph:

"The plaintiff further insists that he was entitled to immediate payment for his services, so far as the sale of the personal property was concerned, and for legal services. The trial judge properly held that

so far as those services, they being of a character not obnoxious to the Statute of Frauds, were joined together in an indivisible contract with services that were obnoxious to the Statute, the whole contract would be void; that there could be no recovery under the bill of particulars in the case, for the bill of particulars is inconsistent with a recovery on a quantum meruit. The bill of particulars, being based on the contract, in the absence of an amendment, there could be no recovery. The plaintiff declined to ask for an amendment."

The defendant raised this point in her argument for a nonsuit. (See S. of C., P. 114, l. 30 to 35; S. of C., P. 115, l. 5 to 20.)

POINT 4.

THE DAMAGES AND VERDICT RENDERED BY THE JURY WERE ERRONEOUS AND CONTRARY TO LAW AND CONTRARY TO THE CHARGE OF THE COURT.

This point is raised by points four, six and seven of the grounds of appeal. (S. of C., P. 1 and 2.)

The Trial Court, in charging the jury, told them that the plaintiff was entitled to recover the reasonable value of the services he rendered for the defendant. This was the plaintiff's first request to charge. See S. of C., P. 120, l. 1 to 5, and l. 31 to 33. Now, if the Trial Court charged the jury that the plaintiff in this case was en-

titled to recover the reasonable value of the services he rendered the defendant, his charge was the law of the case that the jury had to follow. The jury, however, disregarded the Court's charge and allowed interest on their verdict. See S. of C., P. 10, where the clerk certified the verdict of the jury as it came in. The verdict as it was rendered by the forelady of the jury was as follows:

"Jury hands in a verdict in favor of Mr. Westervelt, plaintiff, $3000.00, with interest at 6%.

Marguerite Gilbert,
Forelady, 5-17-28."

Counsel for the plaintiff, however, in drawing up his postea or judgment, computed the 6% interest on the $3,000.00 the jury brought in, and made the judgment read that the jury brought in a verdict in favor of the plaintiff, and against the defendant for the sum of $3,129.00, and ordered that final judgment be entered for the sum of $3,129.00, besides costs of suit of $76.42. See S. of C., P. 9.

There is no part of the Court's charge which authorized the jury to bring in interest on their verdict, and all that the plaintiff was entitled to, under his complaint and the charge of the Court, was the reasonable value of his services, and since the jury brought in a verdict of $3,000.00, with interest at 6%, it was erroneous and contrary to law and contrary to the charge of the Court, which was the law of the case.

POINT 5.

THE PLAINTIFF'S CAUSE OF ACTION AND COMPLAINT BEING BASED ON A QUANTUM MERUIT, DID NOT ENTITLE HIM TO INTEREST ON HIS VERDICT, AND THE VERDICT THEREFORE WAS ERRONEOUS AND CONTRARY TO LAW.

This point is raised by point five of the grounds of appeal. (S. of C., P. 1 and 2.)

The plaintiff's complaint was based on a quantum meruit, and demanded $4,000.00 as the reasonable value of his services. See S. of C., P. 5.

In the case of Polhemus v. Annin, 1 N. J. L., p. 176, the following were the facts:

> "It appeared, that Annin, the plaintiff below, had sued Polhemus for detaining his mare 30 days, and in the same suit, had also charged him with goods sold, and with interest on the account; all which were allowed by the Justice, who gave judgment for the amount of the plaintiff's claim.
>
> Per Cur. The demands for an illegal detention of the plaintiff's property and for goods sold, cannot be joined in the same action. The allowance of interest upon an open account, is also illegal."
>
> Reverse the judgment.

In the case of Speer v. Van Orden, 3 N. J. L., p. 653, the following were the facts:

> "The action below was brought by Van Orden against Speer on the following state of demand:—

> The plaintiff demands of the defendant fourteen dollars and fifty cents, for this, that whereas the defendant, some time in the month of April, eighteen hundred and seven, at Preakness, in the County of Bergen, a certain negro boy named Caesar and a dog did keep, which said negro with the dog, to wit: the time and place aforesaid, then being the negro and dog of defendant, one heifer of the plaintiff, then and there did bite, beat, would and kill, of the price of twelve dollars and seventy-five cents, with the interest for two years, one dollar and seventy-five cents, making the injury and damage in the whole, fourteen dollars and fifty cents, for which sum the plaintiff prays judgment against the defendant.
>
> The insufficiency of this state of demand, was alleged as a cause of reversal.
>
> Per Cur. Without deciding how far the master of a negro is liable for the tortious acts, interest on uncertain and unascertained damages cannot be recovered."
>
> Judgment reversed.

In the case of Hoagland v. Segur, 38 N. J. L., p. 230, the following appears in the third syllabus:

> "Where the sum named in an agreement is not a penalty, but is liquidated damages, which is recoverable, not as the representative of an actual debt, or as the measure of actual compensation, but as the damages fixed by the parties to be recovered on a breach, the verdict must be for the precise sum. Interest on it from the date of the breach cannot be added."

And on page 238, of the opinion, in the last paragraph, the following appears:

> "In cases where the contract is for the payment of money, or the performance of a collateral act, and the sum named is strictly a penalty—the actual debt or damages only being recoverable—a recovery for the full amount thereof is sometimes allowed, in the shape of interest or damages, in excess of the sum named as the penalty."

Citing the cases of Lonsdale v. Church, 2 T. R. 388; Long's Adm'r. v. Long, 1 C. E. Green 59; Martin v. Taylor, 1 Wash. C. C. R. 1.

And on page 239, the Supreme Court said through Mr. Justice Depue, first line:

> "But where the sum named is not a penalty, but is liquidated damages, which is recoverable, not as the representative of an actual debt, or as the measure of actual compensation, but as the damages fixed by the parties to be recovered on a breach, the verdict must be for that precise sum. The precedents are uniformly to that effect."

And in the next paragraph, the Court said:

> "The application of this principle to the present case is eminently proper, in view of the language of the parties. They agree that the damages to be recovered in any action shall be the sum of $10,000. A jury cannot assess damages when the parties themselves have fixed them."

Citing Mayne on Damages 170.

> "The verdict should be set aside, and a new trial granted. Costs to abide the event."

In the case of Munn & Company v. Americana Company, et al., reported in 82 N. J. Eq., p. 443, on page 444, the Court said in the secand syllabus:

> "Defendant's contract to furnish a minimum of ten thousand annual subscriptions for one of complainant's papers at a specified price contemplated a running account, requiring a yearly demand for settlement for any deficiency in order to entitle complainant to recover interest on the loss sustained by any annual default, and a failure to demand interest at any time during an informal continuance of the contract barred the addition to such liability to that expressed in the contract under which the parties continued to act, and which did not provide for interest."

See also the last paragraph on p. 449 of the opinion where the Court refused to allow interest on the demand.

The Court will readily see from the above cases, that interest cannot be had on an unliquidated amount, and since the plaintiff's complaint is based on a quantum meruit, all he would be entitled to is the reasonable value of his services, and since that value is unliquidated and is for the jury to fix, it was error for the jury to bring in a verdict of $3,000.00 and interest at 6%. See P. 10, S. of C., the clerk's certification of the

jury's verdict as it came in. If, however, the plaintiff sued on a contract for $4,000.00, which the defendant agreed to pay him, and then the jury brought in interest at 6%, such a verdict would be legal and valid, since a definite amount to be paid would be in dispute, but counsel has made an exhaustive search of the authorities and fails to find a single case where interest has been allowed on an unliquidated amount.

For all of which reasons it is respectfully submitted that the verdict and judgment of the Bergen Circuit Court be set aside and for nothing holden.

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October Term, 1928.

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