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Notice of Appeal.

NOTICE OF APPEAL.

Filed March 26, 1924.

(2 Cases)

DISTRICT COURT OF THE SECOND
JUDICIAL DISTRICT OF THE
COUNTY OF ESSEX.

10

HOWARD RICHARDSON,

Plaintiff,

On Contract.

vs.

*Notice of
Appeal.*

JACOB HEINOCHOWITZ,

Defendant.

Messrs. Dalrymple & Campbell,
Attorneys of Plaintiff.

20

SIRS:

PLEASE TAKE NOTICE that the defendant hereby
appeals to the New Jersey Supreme Court from
the judgment rendered in the above case.

Yours respectfully,

MILTON M. UNGER,
Attorney of Defendant.

30

40

Page #6317

Defendant's

Defendant's Cost

1.00

1.00

1.00

1.00

1.00

1.00

1.00

1.00

1.00

1.00

attorneys.

torney.

sued; return-

Docket Entries.

The summons was returnable as follows:

The said defendant not being found, I served the within summons Sept. 19, 1923, by leaving a copy thereof at his residence with a member of his family above the age of fourteen years informing him of its contents.

CHARLES J. SCHROEDER,
Sergeant-at-Arms.

10

Sep. 21, 1923. A State of Demand was filed.

Sep. 25, 1923. Defendant filed a specification of defenses.

This was adjourned to Oct. 19, 1923; Nov. 16, 1923.

Nov. 16, 1923. This case was listed and called. The plaintiff and the defendant appearing this cause was heard at this time.

20

By consent this was tried with #5862 between the same parties.

The following was sworn as stenographer; Herman Winarsky.

The following witnesses were sworn on behalf of the plaintiff; Howard Richardson.

This was adjourned to Nov. 21, 1923.

Nov. 21, 1923. The plaintiff and defendant appearing, the trial of this cause was resumed.

30

The following witnesses were sworn on behalf of the plaintiff:

Howard Richardson (was recalled.)

George L. Thompson.

The following witnesses were sworn on behalf of the defendant:

Jacob Heinochowitz,
Samuel Heinochowitz,
Briston Tyler,
Hudson Gillard.

40

Docket Entries.

The Exhibits were:

- P. 1. Contract.
- P. 2. Card of Employment Agency.
- P. 3. Letter fr. Thompson, May 31, 1923.
- P. 4. Letter fr. Thompson, May 15, 1923.
- D. 1. (ident) Letter May 15, 1923.
- 10 D. 1. Check #1203—\$70—Jan. 16, 1923.
- D. 2. Time slip.
- D. 3. Check #1249—\$26.90—June 29, 1923.

Nov. 21, 1923. Whereupon it is on this day, by this Court considered and adjudged that Howard Richardson, the plaintiff, recover against Jacob Heinochowitz, the defendant, the sum of four hundred dollars damages and the costs of suit.

Dec. 5, 1923. Defendant filed a Rule S. C., returnable Dec. 12, 1923. Proceedings stayed.

- 20 This case was listed and called. The plaintiff and the defendant appearing this cause was heard at this time.

Plaintiff filed an affidavit—After argument.

Decision was reserved.

Feb. 13, 1924. Decision announced as follows: Rule dismissed.

Feb. 15, 1924. Rule to dismiss. Rule to show cause filed.

- 30 Feb. 21, 1924. Affidavit in answer to rule to show cause filed.

Feb. 28, 1924. Execution issued.

Mar. 3, 1924. Rule to show cause was filed; returnable Mar. 7, 1924.

This was adjourned to March 21, 1924.

Mar. 21, 1924. This case was listed and called. The plaintiff and the defendant appearing this cause was heard at this time.

- 40 After argument on the rule to show cause the Court dismissed the rule but continued the stay of execution until March 28, 1924.

Docket Entries.

Mar. 25, 1924. Defendant filed a notice of appeal.

Mar. 31, 1924. Plaintiff filed order dismissing Rule S. C.

The execution was returned as follows:

I have returned this execution April 3, 1924. Unsatisfied. I have made diligent search and inquiry and could not find any goods and chattels of the defendant whereof to levy to make the debt and costs or any part thereof. 10

CHARLES J. SCHROEDER,
Sergeant-at-Arms.

Apr. 8, 1924. Defendant filed an Appeal Bond.

Apr. 15, 1924. Transcript of Docket Page issued.

DISTRICT COURT OF THE SECOND 20
JUDICIAL DISTRICT OF THE
COUNTY OF ESSEX.

STATE OF NEW JERSEY, }
COUNTY OF ESSEX. } ss.

I, J. EDWARD DELANCY, Clerk of the District Court of the Second Judicial District of the County of Essex, do hereby certify that the foregoing transcript of Docket page #6317 is a true copy of the record of the proceedings in the matter wherein Howard Richardson was plaintiff and Jacob Heinochowitz was the defendant and that the judgment above set forth stands open and unpaid of record. 30

IN TESTIMONY WHEREOF, I have here-
unto set my hand and affixed the seal
(SEAL) of said Court, at Irvington, New Jersey, this fifteenth day of April, A. D. nineteen hundred and twenty-four. 40
J. EDWARD DELANCY,
Clerk.

*Docket Entries.***DOCKET ENTRIES.**

(Suit No. 2.)

ON CONTRACT.

Transcript Docket Page #5862

10

HOWARD RICHARDSON,
Plaintiff,

vs.

JACOB HEINOWITZ,
 135 Johnson Ave., Newark,
Defendant.

20

Plaintiff's

Defendant's

Cost

Cost

Summons 2.10

Mileage24

Listing 1.50

Atty. Fees 8.64

Order

1.00

12.48

Order 1.00

1.00

30

Order 1.00

Appeal Bond

1.00

Execution 1.59

Transcript

1.00

Dalrymple & Campbell, plaintiff's attorneys.

Milton M. Unger, defendant's attorney.

July 25, 1923. Summons was issued; return-
 able Aug. 8, 1923.

40

The demand was \$120.

Docket Entries.

The summons was returnable as follows:

I served the within summons Aug. 1, 1923, on the defendant by reading it to him and giving him a copy thereof.

CHARLES J. SCHROEDER,
Sergeant-at-Arms.

10

Aug. 3, 1923. A State of Demand was filed.

This was adjourned to Sep. 5, 1923; Sep. 7, 1923; Sep. 19, 1923; Oct. 19, 1923; Nov. 16, 1923.

Nov. 16, 1923. This case was listed and called. The plaintiff and the defendant appearing this cause was heard at this time.

By consent this was tried with #6317 between the same parties.

The following was sworn as stenographer; Herman Winarsky.

20

The following witnesses were sworn on behalf of the plaintiff: Howard Richardson.

This was adjourned to Nov. 21, 1923.

Nov. 21, 1923. The plaintiff and defendant appearing, the trial of this cause was resumed.

The following witnesses were sworn on behalf of the plaintiff:

Howard Richardson (was recalled).

George L. Thompson.

30

The following witnesses were sworn on behalf of the defendant:

Jacob Heinochowitz,
Samuel Heinochowitz,
Briston Tyler,
Hudson Gillard.

The Exhibits were:

P. 1. Contract.

P. 2. Card of Employment Agency.

40

Docket Entries.

- P. 3. Letter fr. Thompson, May 31, 1923.
- P. 4. Letter fr. Thompson, May 15, 1923.
- D. 1. (ident) Letter May 15, 1923.
- D. 1. Check #1203—\$70—Jan. 16, 1923.
- D. 2. Time slip.
- D. 3. Check #1249—\$26.90—June 29, 1923.

10 Nov. 21, 1923. Whereupon, it is on this day, by this Court considered and adjudged that Howard Richardson, the plaintiff, recover against Jacob Heinochowitz, the defendant, the sum of \$172.80 and the costs of suit.

Dec. 5, 1923. Defendant filed a Rule S. C., returnable Dec. 12, 1923. Proceedings stayed. This case was listed and called. The plaintiff and the defendant appearing, this cause was heard at this time.

20 Plaintiff filed an affidavit—After argument. Decision was reserved.

Feb. 13, 1924. Decision announced as follows: Rule dismissed.

Feb. 15, 1924. Rule to dismiss. Rule to show cause filed.

Feb. 21, 1924. Affidavit in answer to rule to show cause filed.

Feb. 28, 1924. Execution issued.

30 Mar. 3, 1924. Rule to show cause was filed returnable: March 7, 1924.

This was adjourned to March 21, 1924.

Mar. 21, 1924. This case was listed and called. The plaintiff and the defendant appearing this cause was heard at this time.

After argument on the rule to show cause the Court dismissed the Rule but continued the stay of execution until March 28, 1924.

Mar. 25, 1924. Defendant filed a notice of appeal.

40 Mar. 31, 1924. Plaintiff filed an order dismissing Rule S. C.

Docket Entries.

The execution was returned as follows:

I have returned this execution April 3, 1924.
Unsatisfied: I have made diligent search and inquiry and could not find any goods and chattels of the defendant whereof to levy to make the debt and costs or any part thereof.

CHARLES J. SCHROEDER, 10
Sergeant-at-Arms.

Apr. 8, 1924. Defendant filed an Appeal Bond.

Apr. 15, 1924. Transcript of Docket Page issued.

DISTRICT COURT OF THE SECOND
JUDICIAL DISTRICT OF THE
COUNTY OF ESSEX.

STATE OF NEW JERSEY, }
COUNTY OF ESSEX. }ss. 20

I, J. EDWARD DELANCY, Clerk of the District Court of the Second Judicial District of the County of Essex, do hereby certify that the foregoing transcript of Docket page #5862 is a true copy of the record of the proceedings in the matter wherein Howard Richardson was plaintiff and Jacob Heinochowitz was the defendant, and that the judgment above set forth stands open and unpaid of record. 30

IN TESTIMONY WHEREOF, I have here-
unto set my hand and affixed the seal
(SEAL) of said Court, at Irvington, New Jersey, this fifteenth day of April, A. D. nineteen hundred and twenty-four.

J. EDWARD DELANCY,
Clerk. 40

State of Demand.

STATE OF DEMAND.

DISTRICT COURT OF THE SECOND
JUDICIAL DISTRICT OF THE
COUNTY OF ESSEX.

10

HOWARD RICHARDSON,

Plaintiff,

On Contract.

vs.

*State of
Demand.*

JACOB HEINOWITZ,

Defendant.

Plaintiff, a resident of the City and State of
New York, says that:

20

FIRST COUNT.

1. On the 29th day of May, 1923, the plaintiff
agreed to work as chef for the defendant, and de-
fendant agreed to hire the plaintiff for the sum of
\$150.00 per month from May 29th, 1923, to June
30, 1923, and from July 1st, 1923, to September
15th, 1923, at \$200.00 per month.

30

2. Plaintiff entered upon the discharge of his
duties under said contract and faithfully dis-
charged the same from May 29th, 1923, to June
30, 1923.

3. The plaintiff earned under said contract
from May 29th, 1923, to June 30th, 1923, the sum
of \$160.00.

4. Defendant has paid plaintiff on account of
said sum \$75.00 and the balance, amounting to
\$85.00, is still due and unpaid.

40

State of Demand.

5. Plaintiff demands the payment of said \$85.00, but defendant has wholly refused and failed to pay the same or any part thereof.

SECOND COUNT.

1. On or about May 29th, 1923, plaintiff entered into a contract with the defendant by the terms of which plaintiff agreed to work as chef for the defendant from May 29th, 1923, to September 15th, 1923, and to receive \$150.00 per month from May 29th, 1923, to June 30th, 1923, and \$200.00 per month from July 1st to September 15th, 1923. 10

2. Said plaintiff and defendant agreed that said compensation was to be paid to the plaintiff twice monthly: on the 15th and last day of each month. 20

3. Plaintiff entered upon and faithfully discharged his duties under said contract and the defendant prior to July 15th, 1923, wrongfully and without just cause discharged the plaintiff. 20

4. Plaintiff has been ready and willing at all times to perform the said agreement dated May 29th, 1923, and is still ready and willing to perform the same.

5. The plaintiff has not been able to obtain employment since his wrongful discharge by said defendant, although he has tried diligently so to do. 30

6. Plaintiff demands \$100.00, the amount due under said contract from July 1st, 1923, to July 15th, 1923.

DALRYMPLE & CAMPBELL,
Attorneys of Plaintiff.

State of Demand.

STATE OF DEMAND.

DISTRICT COURT OF THE SECOND
JUDICIAL DISTRICT OF THE
COUNTY OF ESSEX.

10	HOWARD RICHARDSON,	}	<i>On Contract.</i> <i>State of</i> <i>Demand.</i>
	<i>Plaintiff,</i>		
	<i>vs.</i>		
	JACOB HEINOWITZ,		
	<i>Defendant.</i>		

Plaintiff, a resident of the City and State of New York, says that:

20

FIRST COUNT.

1. On or about the 29th day of May, 1923, the plaintiff entered into a contract with the defendant by the terms of which plaintiff agreed to work as chef for the defendant from May 29th, 1923, to September 15th, 1923, and under said contract was to receive \$150.00 per month, from May 29th, 1923, to June 30th, 1923, and \$200.00 per month from July 1st, 1923, to September 15th, 1923.

30

2. A true copy of said contract annexed hereto and made a part hereof.

3. Said plaintiff and defendant agreed that said compensation was to be paid to the plaintiff twice a month on the 15th and last day of each month. Plaintiff entered upon and faithfully discharged his duties under said contract from the 29th of May, 1923, to June 30th, 1923, at which time the defendant, without just cause, wrongfully

40

discharged plaintiff.

State of Demand.

4. The plaintiff has not been able to obtain employment since his wrongful discharge by the said defendant, although he has tried diligently so to do.

5. Plaintiff demands judgment for \$400.00 under the said contract for the period from July 16th, 1923, to September 15th, 1923, both inclusive. 10

DALRYMPLE & CAMPBELL,
Attorneys of Plaintiff.

Grand View Park Hotel,
Morris County, N. J.

May 29th, 1923.

This is to certify that I, George L. Thompson, manager of the above Hotel, do hereby 20
employ Howard Richardson as chef, of the
above Hotel, from May 29th, 1923, till June
30th, 1923, at the rate of \$150.00 per month
and from July 1st, 1923, the said Howard
Richardson is to receive \$200.00 per month
as chef until September 15th inc., on which
day at midnight this term of contract expires.
The said Howard Richardson agrees to remain
with the above Hotel as Chief Chef till the 15th 30
of September, 1923, one day per week off duty
with pay.

Signed: JACOB HEINOWITZ, Owner.
GEORGE L. THOMPSON, Manager.
HOWARD RICHARDSON.

*Specification of Determinations.***SPECIFICATIONS.**

Filed May 1, 1924.

New Jersey Supreme Court

10	2897 HOWARD RICHARDSON, <i>Plaintiff,</i> <i>vs.</i> JACOB L. HEINOWITZ, <i>Defendant.</i>	}	<i>Cases No. 1 and 2. Action at Law. On Appeal. Specifications of Error.</i>
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20 The following are specifications of the determinations of the District Court with which the appellants are dissatisfied in point of law.

1. The Court erroneously admitted in evidence over objection Exhibit P. 3, being a letter written by George L. Thompson to Thomas F. Reilly, purporting to set forth the terms of the plaintiff's employment.

30 2. There is no evidence to support the finding of the Court that the plaintiff was employed by the defendant.

3. Because it appeared from the undisputed facts of the case that the plaintiff voluntarily abandoned his employment at the end of June and was not entitled to the amount of his recovery.

40 4. Because the suit was on a written contract purporting to have been signed by the defendant, and there was no evidence to show that it was signed by the defendant, authorized by the defendant or that the agreement was in fact made by the

Specification of Determinations.

defendant with the plaintiff, and that at most it was binding upon the parties who executed the same.

5. Because the judgment is contrary to the evidence.

MILTON M. UNGER,
Attorney for Defendant.

10

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30

40

Howard Richardson, direct.

DISTRICT COURT FOR THE SECOND
JUDICIAL DISTRICT OF ESSEX COUNTY.

	HOWARD RICHARDSON	} <i>Plaintiff,</i>
10	<i>against</i>	
	JACOB L. HEINOWITZ,	
		} <i>Defendant.</i>

Transcript of shorthand notes of testimony
taken in the above-entitled matter on Friday, No-
vember 16, 1923, at half-past three o'clock in the
afternoon, at the District Court, Clinton avenue,
Irvington, N. J., before his Honor, Charles H.
20 Stewart, Judge of said Court.

Appearances:

William H. Campbell, Jr., Esq., attorney for
plaintiff.

Milton M. Unger, Esq., attorney for defendant.
(Herman Winarsky, stenographer, sworn.)

30 HOWARD RICHARDSON, the plaintiff, sworn
in his own behalf.

Direct examination by Mr. Campbell.

Q Where do you live, Mr. Richardson? A 370
Riverside.

Q How long have you been living in New York
City? A Six years.

Q What is your vocation? A Well, up until
40 May 11th I was restaurant owner.

Howard Richardson, direct.

Q Are you a chef, licensed in that particular work? A Yes, I am a first-class chef.

Q Do you know Mr. Jacob Heinochowitz, the gentleman at the right? A Yes.

Q When did you first meet him? A May 29th.

Q How did you come to meet Mr. Heinochowitz? A Through Mr. Thompson—through an employment agency. 10

Q What did you do—file an application with an employment agency for a position? A No. Mr. Reilly had been furnishing me with help for my two restaurants, and when I closed up he said, “I will give you a good position in the country for a friend of mine.”

Q Who is Mr. Reilly—of the employment—employment manager? A Employment manager.

Q Did Mr. Thompson come to you? A He came to me several times through Mr. Reilly and had him call me to meet him at Mr. Reilly’s. 20

Q What did Mr. Thompson meet you for?

The Court: When, please?

The Witness: After the eleventh of May.

Q On what date was that you met Mr. Thompson? A Something about the twentieth of May.

Q What did Mr. Thompson do? 30

Mr. Unger: I object.

The Court: Wasn’t there any time which you admit Mr. Thompson was in the employ of Mr. Heinochowitz.

Mr. Unger: We admit he was around doing certain things, but not in his employ for the purpose of possessing powers which might be binding on us nor to do whatever the witness is going to testify he did. 40

Howard Richardson, direct.

The Court: I will admit it subject to its being stricken out if you don't prove Mr. Thompson was an agent authorized to transact this kind of business.

10 Q You met Mr. Thompson in New York? A In New York.

Q What did Mr. Thompson tell you? A That he was manager of the Grand View Park Hotel.

The Court: What was the date, please?

The Witness: The twentieth.

The Court: Of May?

The Witness: Of May.

20 Q And did he tell you where the Grand View Park Hotel was? A Yes, he told me where it was.

Q And that it was in Hackettstown, New Jersey? A Hackettstown, New Jersey.

Q And did he ask you to report? A No; I didn't give him my word. I told him the salary was too small. I said, "I paid my cook here for eight hours' work thirty-seven and a half dollars a week, and six days a week; and the salary they offered was too small."

30 Q What salary did they offer you? A A hundred and fifty dollars a month.

Q And they wanted you for what position? A Chef.

Q When did you next have a talk with Mr. Thompson? A Mr. Reilly called me up on the twenty-fourth.

Q Did you see Mr. Thompson subsequent to the twenty-fourth? A No.

40 Q Who directed you to go to Hackettstown? A Mr. Reilly called me up and asked me to come

Howard Richardson, direct.

down, and I went down to him, and he asked me to take his position; that they were going to have a party there on Decoration Day and they wanted me to come out a few days before the time. I said, "I think I have a case pending here in New York. I can't go until the twenty-eighth or twenty-ninth." They said, "What date"? I said, "The twenty-ninth." And I packed up on the twenty-ninth. 10

Q Was there any stated sum that you were to receive prior to going to Hackettstown? A A hundred and fifty dollars.

Q Who made that statement, now? A You know, in an employment agency they got to tell you what is the price you are going for. Mr. Reilly told me then to inquire for Mr. Jacob Heinochowitz or Mr. George L. Thompson. Those were the two men I would have to see when I got there. 20

Q You went to Hackettstown in compliance with the request of Mr. Reilly? A Yes.

Q When you got to Hackettstown what did you do? A Just as directed. I went to the American House from the depot, and I called up Mr. Heinochowitz.

Q And you got in touch with a man who said he was Heinochowitz? A Yes. 30

Q Which Heinochowitz did you ask for? A Mr. Jacob Heinochowitz.

Q Who answered the 'phone? A I don't know that. I called upon him at the American House.

Q Then what did you do after you made the call? A They told me to take a seat, and Mr. Heinochowitz came for me himself.

Q This Mr. Heinochowitz (pointing)? A Mr. Jacob Heinochowitz came himself. 40

Howard Richardson, direct.

Q What time of the day was it he met you on the twenty-ninth of May, 1923? A Well, I think it was between three and four o'clock.

Q In the afternoon? A Yes, something after four. It was around four o'clock, anyway.

10 Q What did Mr. Heinochowitz say when he first met you, if anything? A When he first met me he came up and told me his name, he was Mr. Heinochowitz, and I shook hands with him, and he said, "We will go around and buy some stuff." We went around to a vegetable stand, and he said, "I am going to let you get what you want in the hotel, just what you need," and we brought a few things up to the house. That night I cooked dinner for them.

20 Q After you bought these things, vegetables, what did you do next? A Got in the car with him and went up to the hotel.

Q Did he say anything about who owned or managed the hotel? A Yes. He told me he owned the hotel and also houses in Newark here.

Q Did he say he had a manager or not? A Yes. He told me Mr. Thompson was the manager.

30 Q Did he tell you whom you would take orders from? A Yes; I would have to take orders from Mr. Thompson; he wouldn't have anything to do with the food.

Q Mr. Heinochowitz took you to the hotel? A Yes, direct to the hotel.

40 Q You met Mr. Thompson there? A I met Mr. Thompson there. And I noticed on my letter of introduction to Mr. Thompson and Mr. Heinochowitz together to be sent—that is, to be sent back to the office and registered in the office, and I did that.

Howard Richardson, direct.

Q Did you enter into a discussion with Mr. Thompson or Mr. Heinochowitz or both of them regarding the employing of you as a chef of the Grand View Hotel? A Yes. Mr. Heinochowitz said he was so hungry, he wanted a good, cooked meal; would I mind cooking the meal at night. I said no. He would talk with me after dinner. So I got busy and cooked the dinner. 10

Q When did you discuss the matter of terms of your employment? A After the dinner Mr. Heinochowitz and Mr. Thompson carried me into the dining-room.

Mr. Unger: Carried you?

The Witness: I walked in. They called me. They didn't pick me up bodily.

Q What were the terms of the agreement which you discussed, if any? A The terms of the agreement, that I was to receive a hundred and fifty dollars for the first month and two hundred dollars for the month after that. 20

Q Was there a writing signed in your presence? A Mr. Heinochowitz told Mr. Thompson to draw this writing, and I went on back to the kitchen then.

Q Is that the writing (showing witness)? A That is the writing. And Mr. Heinochowitz called me back after that, about ten minutes after. Him and Mr. Thompson were talking in the dining-room—and signed this. 30

The Court: Who signed it?

The Witness: Mr. Heinochowitz said, "My hands is dirty"; he was fooling with his car; and he made two dots here, and he said, "Mr. Thompson, go ahead now." And he left 40

Howard Richardson, direct.

everything up to him, and Mr. Heinochowitz—Mr. Thompson signed on those two dots and I signed underneath.

Q Was there any stipulated time as to when your wages were to be paid? (Reading paper):
 10 "This is to certify that I, George L. Thompson, manager of the above hotel, do hereby employ Howard Richardson as chef of the above hotel from May 29, 1923, to June 30, 1923, at the rate of \$150 a month, and from July 1, 1923, the said Howard Richardson is to receive \$200 per month as chef to September 15th inclusive, at which date, at midnight, the term of the contract expires. The said Richardson, however, agrees to remain as chief chef up to September 15, 1923, one week off duty with pay." At the time Mr. Thompson
 20 signed this contract—he signed it "Jacob Heinochowitz, owner, by George L. Thompson"? A Yes.

Q Was Jacob Heinochowitz present? A Yes, he was present.

Q And did he ask Mr. Thompson to sign that? A He directed Mr. Thompson to sign that.

Q When were you to be paid? A He didn't say on what date. He said, "Whenever I can pay
 30 you, just like you want." He said, "I will pay you any time"; but he says, "I will pay you twice a month, if you wish; we will make it twice a month."

Q So you understood you were going to get paid twice a month, the middle and the last? A Twice a month, the middle and the last of the month.

Q Did you remain at the hotel from May 29th through to June 23rd, when Mr. Thompson left?
 40 A I did.

Howard Richardson, cross.

Q And at that time did you take orders from Mr. Thompson? A Yes.

Q And Mr. Heinochowitz was present when Mr. Thompson was giving these orders? A Sure, he was present.

Q Did Mr. Thompson in your presence do any duties in there, general duties? A Yes, he did. 10

Q During that time did you see him employ anybody? A Yes, yes, I did.

The Court: Mr. Thompson or Mr. Heinochowitz?

The Witness: Mr. Thompson. I seen Mr. Thompson hire carpenters

Mr. Unger: When was this from?

Mr. Campbell: From May 29th to June, the time he left. 20

Cross examination by Mr. Unger.

Q When was this piece of paper written? A On the twenty-ninth of May.

Q Can you account for the difference in the color of the ink in some portions of it? A They started it off, and I went back in the kitchen, and they called me when they got it finished, and they told me to read it over, and then I signed it. You ask those two men the difference in the ink. I don't know anything about that. 30

Q The bottom of the contract reads, "One day per week off duty with pay." Do you want us to understand that those words were on there at the time when the main portion of the contract was drawn?

Howard Richardson, direct.

The Court: Isn't it the admissibility of the contract and the construction we place on it.

Mr. Unger: If I can show that—

10 The Court: That is a question, if there was a jury here, but for me sitting as a jury, to decide whether it was added afterwards or not.

Mr. Unger: On its face it is admissible.
(Marked Exhibit P. 1.)

Direct examination by Mr. Campbell (continued).

Q How long did you remain with the Grand View Hotel? A Until the twenty-ninth of June.

20 Q And did you act as chief chef during that time? A I acted as everything—dish washer, chef, potato peeler and onion peeler; I had complete charge of everything.

Q Did you get off one day a week as that contract provides for? A I did.

Q Did Mr. Heinochowitz on or about the sixth or seventh of June, 1923, call you up by 'phone and tell you that he had discharged Mr. Thompson as manager and that he would no longer—

30

Mr. Unger: (Interrupting.) Don't you think he ought to testify?

The Court: I do.

40 Q Will you tell the Court the nature of the telephone conversation you had with Mr. Heinochowitz regarding Mr. Thompson on or about the sixth or seventh of June, 1923, if there was any such conversation? A That day I was in the kitchen. I got through feeding the men. I was

Howard Richardson, direct.

washing the dishes. And about two o'clock Mr. Hinochowitz called me on the 'phone and said, "Is this the chef"? I said, "Yes." He said, "Where is Harry"? I said, "He has gone in the woods somewhere." He said, "All right. Don't let that Thompson come into that hotel there because I have discharged him; and I will be up there this afternoon or tomorrow. I got some business to attend. I can't get up there till tomorrow afternoon." I said, "Wait a minute, Mr. Heinochowitz. I don't want nothing like that. I will call Harry to the 'phone," and I called his brother to the 'phone, and his brother took the message.

Q After the seventh of June and after Mr. Thompson had left the hotel, did you have any conversation with Mr. Jacob Heinochowitz regarding this contract? A Yes. Mr. Jacob Heinochowitz during this contract asked me several times to turn the contract over to him, and we would draw up another one; that he wouldn't want to recognize nothing that Mr. Thompson had did; and he said, "If you will give me that contract I will pay you three hundred dollars a month." And I started to do it, and then when I went home, naturally my wife, she said, "No, don't do that. Leave that right here." And when I went back Mr. Heinochowitz asked me for the contract, and I told him I couldn't find it.

Q How many times did he ask you for the contract? A He asked me for the contract several times; and the last time he asked me for it I said, "I can't give you the contract. If you want anything I will give you this introduction card." I gave him the introduction card because I knew it had been registered and mailed back to Mr. Reilly.

Howard Richardson, direct.

It went through the mail and registered back in the office of Mr. Reilly.

Q What were the circumstances which caused you to leave your employment with the Grand View Hotel the latter part of June, 1923? A There was nothing for me to do, only with Mr. Heinochowitz.

Q Tell the Court what those circumstances were. What happened? What led up to it? A I went in on the twenty-eighth—twenty-seventh, yes, twenty-seventh—twenty-eighth—

The Court: Of what?

The Witness: Of June. That night after my day's services had been performed, and I had to be in court in New York City at nine o'clock on the twenty-ninth—so I was there, and I found out that my case there was after. And I caught the next train back, and I got back on the twenty-ninth before twelve o'clock.

Q Did Mr. Heinochowitz tell you you had his permission to leave? A Sure. He gave me his commutation ticket. He said, "Use this. Go ahead, take this, and you can pay me the difference on it, if you want to, or just pay me for what you use."

Q And you returned as quickly as you were through? A After I was through.

Q Did Mr. Heinochowitz complain about your cooking? A No; he couldn't complain.

Q He was perfectly satisfied? A Everybody was perfectly satisfied.

Q When you went to New York on the evening of the twenty-eighth did he say anything with reference to this particular contract? A

Howard Richardson, direct.

Yes. He told me to bring it back with me and he would write up a different one, and pay me my money.

Q When you got back on the twenty-ninth what transpired between you and Mr. Heinochowitz? A When I got back on the twenty-ninth I seen a whole crew. When I came back this Mr. Heinochowitz (indicating) called me into the dining-room. So I went in. He said, "This is the new man. We can't use you because we think you have been 'kicking' on us." I said, "You haven't been hearing me 'kicking.'" I said, "A person may get hot in the kitchen anyway." 10

Mr. Unger: Who said that?

The Witness: This Heinochowitz (indicating). So Mr. Heinochowitz said, "Well, I may use you; but anyway, I will have to discharge you now," and he said, "Sam will pay you." 20

Q Did they say anything about selling the hotel or not at that time? A Yes, yes; I know they were trying to sell it, because Heinochowitz brought a gentleman up there again that is in New York City now that he tried to sell the hotel to; but the gentleman didn't like it; and Mr. Heinochowitz turned the gentleman over to me and told me to take him all around and show him through the hotel. 30

Q Did they say the house was disposed of and a new man was in possession? A Yes; that Mr. Tyler purchased that, and that it was turned over to him.

Q That was the excuse? A Yes. 40

Howard Richardson, direct.

Q How much money was turned over to you by Heinochowitz during the period you worked?

A Seventy-five dollars.

Q After you left Heinochowitz did you endeavor to secure employment? A I did.

10 Q Did you file applications? A I filed applications and registered.

Q And were you able to secure any? A Not until the last of September.

Q Did you secure any employment between the twenty-ninth of June, the time you were discharged, and the fifteenth of September, 1923? A I did not.

Q When were you first able to secure employment? A The second of October.

20 Q And you had registered for work with employment agencies? A All the time.

30 Q And did you follow the newspapers' ads in an endeavor to get work? A I did; but, you see, it is like this: A chef is high from in May and the last of September, the first of October. In the city after June is over you can't get no chef positions out of the city, and there is nothing doing in New York City until around October, until it gets cold. So you can't get no chef positions hardly, unless you are lucky to run across one; but there is nothing doing in the restaurant business during the summer in New York City.

(At this point an adjournment was taken to Wednesday, November 21st, 1923.)

Howard Richardson, direct.

Wednesday, November 21st, 1923, 11 A. M.

HOWARD RICHARDSON, resumes the stand.

Direct examination by Mr. Campbell (continued).

Q Mr. Richardson, I show you this receipt and ask you where you received it? A That is the commission that I gave the employment agency for that position at Hackettstown with Mr. Heinochowitz. 10

Q What commission? A Ten per cent. on the dollar the first month.

Mr. Unger: I object to the question.

The Court: What difference does it make what per cent. was paid?

Mr. Campbell. I want to show your Honor that Mr. Richardson paid fifteen dollars for obtaining the position at Hackettstown; that the commission he had to pay was ten per cent. of his salary. He paid fifteen dollars. That was the rate he received for the first month's employment at Hackettstown, New Jersey. 20

The Court: Let me see what you are showing him first. You haven't offered it in evidence. 30

Mr. Campbell: I have identified it.

The Court: This is only a receipt. There was some kind of a paper that Mr. Richardson said Mr. Heinochowitz had signed and had been sent back to this employment agency, as I remember it. Have you got that paper?

The Witness: Mr. Heinochowitz has that.

The Court: How would he get it after you sent it back to the employment bureau? 40

Howard Richardson, direct.

10 The Witness: I went back to the employment agency after it was given to me and Heinochowitz asked me for it, and I gave it to him. In the presence of his son he asked me for it, and I gave it to him in the presence of his son. He said he wanted to read it to see how the employment agency contract their business, and I gave it to him.

 The Court: Have you got a notice to produce?

 Mr. Campbell: No.

 Mr. Unger: I will honor the notice now, if it is given. Let the witness tell what he wants.

 Q Describe that receipt which you said you gave Mr. Heinochowitz. A It had The Grand
20 View Park Hotel.

 Mr. Unger: Was the paper signed by Mr. Heinochowitz?

 The Witness: The paper was signed in the presence of Mr. Heinochowitz by Mr. Thompson.

 Q Is that the receipt (showing witness)? Is
30 that signed in your presence? A That was signed in my presence.

 Q Was that signed in the presence of Mr. Heinochowitz? A Yes, it was signed in the presence of Mr. Heinochowitz.

 Q Did Mr. Heinochowitz instruct Mr. Thompson to sign that or not? A He did.

 Mr. Campbell: I offer it in evidence.

 Mr. Unger: Do you know the date it was
40 signed by Mr. Heinochowitz?

Howard Richardson, direct.

The Witness: I can't tell the date. It was some time after.

Mr. Unger: After what?

The Witness: After I was hired.

Mr. Unger: How long after?

The Witness: It was signed the first day, as soon as I got there. That was the first card I gave the two men, the two gentlemen together; that was the first card. 10

Mr. Unger: No objection.

(Marked Exhibit P. 2.)

Q Did you have to pay a commission in order to obtain this position before you were sent?

Mr. Unger: I object. 20

The Court: I don't see how that is material at all. You haven't sued in either case here to recover commissions, as I remember the pleadings.

Mr. Campbell. I merely want to show the rate per month.

The Court: That shows on here—one hundred and fifty dollars, and the rate he paid the brokerage agency. 30

Q I show you this letter and ask whether or not you ever saw this before today? A I did.

Mr. Campbell: I am going to offer this in evidence, if you don't object to it at the present time. If you do, I will connect it up.

Mr. Unger. I object. It is not binding upon us. 40

Howard Richardson, cross.

The Court: I will admit it. You may have an exception.

(Letter marked Exhibit P. 3.)

10 Q When did you first see this letter? A After the discharge I went to Mr. Reilly and asked him concerning this place. I says, "I haven't received the seventy-five dollars of this money; unless I pay you commission on a hundred and fifty—" He said, "Well, aren't you going to stay out there?" I said, "No; I am discharged?" So he said, "Well—"

Mr. Unger. Is this the conversation with Reilly?

The Witness: Yes.

20 Mr. Unger: Objected to.

The Court: Objection sustained.

Mr. Unger: I move to strike out whatever he said with reference to his conversation with Reilly.

The Court: I will strike it out.

30 Q From whom did you obtain the letter? A From Mr. Reilly.

Q And you handed me that letter later? A Later. He said he couldn't do nothing.

Q Not what was said. Is that the letter Mr. Reilly gave you (showing witness)? A That is the letter Mr. Reilly gave me.

Cross examination by Mr. Unger.

40 Q I understand you came there on the 29th of May. A Yes, sir.

Howard Richardson, cross.

Q And that within a few minutes after you got there you started to work? A I did.

Q Preparing the evening meal? A Yes, sir.

Q And while the meal was going on or after it had been finished Mr. Thompson wrote out a contract for you? A After the dinner.

Q And Mr. Heinochowitz was unable to sign it, you say? A Mr. Heinochowitz was working around his car, taking things out of his car to put in the ice box, some things that he left in the back of the car, and he took the pen and touched the pen on his name, and Mr. Thompson signed it. 10

Q Did he take the pen ahold with his hands? A He did, with his hands.

Q And notwithstanding the fact he took ahold of the pen with his hands and made some kind of mark there, he wasn't able to sign his name? A You will have to ask him that. 20

Q Is that what you want us to understand happened?

The Court: What?—that he was unable to sign his name or if that is what he did? It is a double question.

Q (Question read.) A He took the pen just like this (indicating) and told Mr. Thompson to go ahead. 30

The Court: Indicating two dots.

The Witness: He said, "You take all the orders from Mr. Thompson."

Q Whose pen did he take ahold of? A His own pen.

Q Did he take his copy back? A His writing pen. 40

Howard Richardson, cross.

Q What did he do—he make two marks on the paper? A Yes.

Q Those ditto marks don't refer to the word "signed" at all? A I don't understand what you are speaking of now.

Q You want us to understand that he actually took his pen in his hand so that he would write?

10 A Yes.

Q Made two ditto marks? A Yes.

Q And told Mr. Thompson to write his name?

A He told him to write.

Q Where was that? A In the dining-room.

Q His hands were dirty so that he couldn't sign? A It was.

Q He had been eating his dinner? A He had been eating his dinner, and went to work on his car.

20 Q When did this happen? A After his dinner.

Q How did he happen to get back into the dining-room? A He called me into the dining-room after dinner.

Q Was Heinochowitz there? A Yes.

Q What was he doing there? A He called me in. Thompson was writing the contract.

Q He called you into the dining-room where he and Thompson was writing out the contract?

30 A He did.

Q Had he finished with his car? A I don't know whether he had finished or not. He was out there after that.

Q Did you see his hands? A I paid no strict attention to his hands.

Q What did you want us to understand when you said his hands were dirty? A I don't know what you understand.

Q You say his hands were dirty? A It was
40 dirty.

Howard Richardson, cross.

Q Was it so dirty that he couldn't hold the pen? A It was oily with lubricating gasoline, I know.

Q He took ahold of the pen to make the dots? A He did, with the tip of the pen.

Q Did you see Mr. Shanefield, the lawyer, there in that hotel that evening? A He wasn't there. 10

Q Are you just as positive about that as you are that Heinochowitz put the two dots there? A I am just as positive Heinochowitz put the two dots, because three men were there in the dining-room.

The Court: Who were they?

The Witness: Mr. Thompson, Mr. Heinochowitz and myself.

Q Did you see Mr. Shanefield there at all that evening? A Not that evening at all, I didn't. 20

Q Or the next day? A I couldn't tell how many were there the next day; I couldn't tell you that—seventy-five or fifty or seventy-five.

Q At all events, you had this contract delivered to you that night? A Mr. Heinochowitz took a copy and gave me a copy.

Q Who made the copy? A Mr. Thompson made the copy under Mr. Heinochowitz's dictation. 30

Q Did you sign the copy? A I did.

Q Did you sign your copy? A I did.

Q And when you signed your copy did you keep it? A I did, sir.

Q Has it been in your possession ever since? A Ever since, till I turned it over to Mr. Campbell.

Q When was that? A I just can't remember.

Q Was that before you started your suit? 40

Howard Richardson, cross.

Mr. Campbell: It was.

Mr. Unger: I am not asking you. I don't think it is fair for you to tell him, either.

Q Was it before or after you started the suit?

A It was—well, when I gave him the money I had to give him the contract to start the suit.

10 Q You know, don't you, whether you handed this contract over to your lawyer before or after you started this suit. A I don't know what you term "started the suit," what you would term "started the suit."

Q What would you term "started the suit"?

A I would start my date if I go to you the first day, and then I would come to you and probably you would take your time about putting the suit in. I would pay you. I would call that starting the suit, as soon as I gave it to my lawyer.

20 Q Did you turn over the contract to him the first time you consulted him? A The first time I didn't turn it over to him.

Q Do you know when the first time was? A I don't; I can't recall.

Q When did you turn it over to him? A I haven't the dates. He can tell you the dates I turned it over to him.

30 Q Well, don't you know? A I don't know.

Q Was it before you came to court here the first time? A Yes, sir.

Q Was it before you came here to testify for Mr. Thompson? A It was.

Q You are sure about that? A I am sure of that.

Q And it was before you brought the first suit in which you sued for the salary up to the first of July? A Yes, sir.

40 Q That was before that time? A Before.

Howard Richardson, cross.

Q You, of course, can't account for the failure to set that contract forth in the papers which were drawn at that time, can you? A I don't quite understand you. You will have to explain that.

Q Do you know any reason why your attorney should have failed to set up that written contract in his state of demand if you furnished him with it before he brought the suit? A Ask him that question. I don't understand that far. 10

Q Did you tell him that you had a written contract? A I did.

Q What time of the day was it when it was signed? A What time of the day when the contract was signed?

Q Yes. A Do you mean with Mr. Heinochowitz and Mr. Thompson?

Q The contract that you have referred to. A Between nine and ten o'clock at night. 20

Q In the evening? A Yes.

Q What time did you have supper that night? A We had supper between six and seven o'clock.

Q So this was a couple of hours afterwards? A Yes, sir; after I cleared the kitchen out.

Q You continued to work there until what day? A Around the 28th or 29th of May.

Q Of June? A Of June.

Q In the middle of June did you get your pay? A I got it some time in June. I just can't recall the date. 30

Q In what form? A I got on account, a check on account.

Q For how much? A Seventy-five dollars, seventy dollars—seventy-five dollars.

Q Was that the amount of the check?

The Court: Two checks or one check?

The Witness: One check. 40

Howard Richardson, cross.

The Court: For how much?

The Witness: Seventy-five dollars.

Q It wasn't a good deal less than that, was it?

A That was the money he had given me, seventy-five dollars.

10 Q You were asked what the amount of the check was. How much was it? A The amount of the check was—the check was seventy dollars and five dollars in cash. The check was seventy dollars; he owed me seventy-five dollars.

Q You borrowed five dollars during the month and that was taken off?

The Court: Is that right?

The Witness: Yes, sir.

20 Q The check was not seventy-five? A It was seventy dollars, and five dollars made seventy-five dollars which I received.

Q And that paid your wages up to the fifteenth? A On account from the twenty-ninth up to the thirteenth, it should be.

Q It paid for a half a month? A Yes, half a month.

30 Q And then you continued to work there, and at the end of the month, the 28th or 29th, was the time you had the difficulty? A Yes.

Q Did I understand from you that you were discharged on that day? A Yes, I was.

Q What happened to cause your discharge? A What happened to cause my discharge? Another crew was in.

Q Did you get drunk that day? A Did I get drunk?

40 Q That is what I am asking you. A I didn't get drunk that day.

Howard Richardson, cross.

Q Were you drinking gin? A Did I keep drinking gin?

Q Don't ask me. A There was plenty liquor being served in the kitchen.

The Court: Were you drinking gin?

The Witness: Not during my working hours. 10

Q Did you drink gin after working hours? A I would take a drink when I went to bed at night, when I had it.

Q Did you get a little bit ugly after it? A I never have been ugly, unless someone did me wrong.

Q Well, whether someone did you wrong or not, did you get ugly? A What do you term ugly? 20

Q Did you grab a knife up and chase anybody? A No, I never grabbed a knife and chased anybody.

Q Did two or three men have to take you out of the house the night you did and put you to sleep in a bungalow somewhere? A Nobody had to take me out in a bungalow; only once that gentleman over there speaks to me about raising my voice when this man was deliberately trying to beat me out of my honest-made salary. 30

Q Did anybody have to take you out from the house by force? A No, nobody had to take me out by force.

Q Did you pack up your grip and leave a couple of days before that? A I put my soiled linen in and left my clean linen out.

Q Did you tell anybody at the farm that you had found a job; that your wife was opening a restaurant in New York and that you were going to quit at the end of June? A No. 40

Howard Richardson, cross.

Q Never told that to anybody? A Never told anybody.

Q That wasn't so? A That wasn't so.

Q Has your wife started a restaurant in New York? A No.

Q Has she one? A No, sir.

10 Q Did she start one from the fifteenth of June to the end of October? A No, sir.

Q Did you get employment anywhere else? A No, sir.

Q Did you tell anybody that? A No, sir.

Q Did you take any property that didn't belong to you on the 29th of June? A Take any property?

Q Yes.

20 The Court: Answer yes or no.

A No, sir.

Q Did you take a couple of suits of clothes and pack them up? A No, sir; absolutely not.

Q Do you know Mr. Tyler? A Yes, sir.

Q What was his job there? A Mr. Tyler was manager there.

Q I thought Thompson was manager? A Not under me, though.

30 Q Whom was he manager under? A I wasn't under Mr. Tyler.

Q Isn't it true that Tyler was the manager there? A Mr. Heinochowitz here told me on the last of June, around a little after June, after that, that four different men had been out there for the job, and he had picked Mr. Tyler out the last of June.

40 Q What did you mean when you said Tyler was manager there? A Because Mr. Heinochowitz showed me the contract.

Howard Richardson, cross.

The Court: Where was Mr. Thompson at that time?

The Witness: Mr. Thompson was not there during the last of June.

Q He wasn't there? A No, sir.

Q Then Mr. Tyler was the manager? A A 10
signed contract Mr. Heinochowitz showed me.

The Court: Was Tyler there that night when you left?

The Witness: Yes.

The Court: And how long had he been there?

The Witness: He had only been there that day. He had been there several times, as visitor several times. 20

Q He was the man who made up the payroll, or the figures for the different employees, wasn't he? A That was the only time, the last day, I think the 28th or 29th.

Q He did it on that day? A On that day.

Q And he made up yours, too, didn't he? A No, he didn't.

Q Did you ever see a slip that he made up covering your salary and everything that was due to you? I show you a piece of yellow paper and ask you if you ever saw that before. A This wasn't on there during my time. I gave that address after. That wasn't on there. That is a blank paper that Sam Heinochowitz wrote. 30

Q Did you see this blank paper? A I did.

Q Under what circumstances? A He asked me for my address in New York City. 40

Howard Richardson, cross.

Q And then you wrote it on the other side? A He wrote it. He pulled it out from a stack, this paper here, and he got that one.

Q You didn't see anything written on the other side? A I am absolutely sure there was nothing written there.

10 Q Do you tell us now that nobody made out that? A Not in my presence.

Q I want to know if you are absolutely sure whether the figures which appear on the other side here in pencil were not made out by Mr. Tyler and were not presented to you— A (Interrupting.) No, sir.

Q Wait a moment; I am not finished. —were not presented to you together with a check for \$26.90. A No, sir.

20 Q And do you say that you did not take this slip with the figures on it and the check for \$26.90? A I did not, sir.

Q And do you say that afterwards, while you were under the influence of liquor, you didn't bring back this slip with the check and give it to Mr. Tyler? A No, sir; I never touched that check.

30 Q You never had this check in your possession? A I never had that check in my possession.

Q Have you seen this check (showing witness)? A I have seen that check right on the desk. I never touched it, because that is what the argument came up about.

Q When did you see this? A The day that I left Mr. Tyler didn't give it to me. Sam was trying to give it to me, and I told him I wouldn't take that.

Q Is that the check for \$26.90? A That's it.
40 I never touched it with my hands.

Howard Richardson, cross.

Q You refused to take it? A I refused absolutely.

Q Do you remember that during the middle of June you told these people that you would have to leave in about a week owing to the fact that your wife had a restaurant, and you were persuaded to remain there until the end of the month? A You want me to tell you the story? 10

The Court: He asked you whether you said that.

A To Mr. Heinochowitz, that I wasn't going to leave myself; all I wanted was two days to straighten her out and I would be back.

Q You did say something about having to straighten her out? A Yes. I told Mr. Heinochowitz my wife was expecting to get a small, little restaurant, and I had a former chef who would work in my place, and I would go there and straighten her out one day or two days, whatever it would take, if it would be with his consent; and he said, "All right. I want you to stay with me and keep you winter and summer, and you can go and come right back." 20

Q Then there was something said about a restaurant? A Trying to get a restaurant, yes. 30

Q And then you went away, did you, at that time? A On my week days, yes, sir.

Q Did she get the restaurant? A No, sir.

Q Didn't get it? A No, sir.

Q And you didn't tell him or anybody on that occasion that you would like to be relieved at the end of the week? A No, sir.

Q Didn't say anything like that? A Didn't say anything like that. 40

Howard Richardson, cross.

Q And you didn't consent on that occasion to work until the end of the month? A I didn't, sir.

Q When this check of \$26.90 was shown to you, do you remember what complaint you had to make at that time about the check? A What complaint I had to make?

10 Q Yes. A Yes, sir.

Q What was it? A This Mr. Heinochowitz's other brother, Harry Heinochowitz, brought down some white suits and says, "Jake, I am going to give Howard one of these." He said, "Sure"—Mr. Heinochowitz said, "Sure, give him one." He said, "I want you to have all white, a combination." So I said, "All right. I got my uniform on." I afterwards took my coat and brown and dark trousers. He said, "No. I want you to put
20 on this white." I said, "All right, if you want to; it is up to you." So he brought another one down and gave me, and I kept the two clean at different times. I wore them at their own request, not at my request, because I didn't want them.

Q It isn't true, is it, that Mr. Tyler accused you of taking these suits? A Absolutely not.

Q And it isn't true that anybody else accused you of taking them? A Absolutely not.

30 Q And you didn't object to being charged with them upon the ground that Mr. Thompson had given them to you? A Mr. Thompson didn't give them to me; Harry Heinochowitz gave them to me.

Q And do you recall that statement when Harry was summoned before all the others and denied that he gave them to you? A He never did. Why don't you have him in court?

Q What was the exact reason that you didn't take the check? A Because it was nothing like
40 my salary at the time.

Howard Richardson, cross.

Q Your salary for the first month was a hundred and fifty? A A hundred and fifty dollars.

Q And you had already received half of it, is that right? A Well, that's right.

Q And you owed Harry four dollars that you borrowed from him? A I never borrowed any money from Harry. It was for merchandise for the store, toilet articles and soaps and creams. 10

Mr. Campbell: I object, your Honor, about Harry Heinochowitz.

The Court: It goes to the question why he wouldn't take the twenty-six-dollar check.

Q Well, you owed four dollars, whether it was cash or something else? A That's all I owed, four dollars. 20

Q And you owed two dollars and seventy cents for your railroad fare? A No, sir, I never owed no two dollars and seventy cents for my railroad fare. My railroad fare, if you read the card, sir, if it is transportation outside of the city, it must be paid by him.

Q I understood you to say when you were here a couple of days ago that Mr. Heinochowitz loaned you his ticket. A He gave me his ticket. 30

Q That he said to you he would charge you the amount of the fare. A That I had taken off there.

Q What is that? A It was ten dollars, I think, the ticket cost, and he told me I could pay him for the amount that I would take off there or take the full ticket if I want it.

Q Well, you used his ticket, didn't you? A Only on request. I didn't ask him for it. 40

Howard Richardson, cross.

Q Well, you told us the other day that he suggested you use his ticket and pay for the amount of the trip. A What I took off there.

The Court: That was Harry Heinochowitz, wasn't it?

10 The Witness: This one (indicating), Jacob.

Q Well, you used his ticket anyway, didn't you; is that right? A Yes.

Q And you were charged two—

The Court: When you went out to take the check?

20 The Witness: No, sir; when I went in town to straighten this business. Mr. Heinochowitz gave me the last day. When I came back he had another man.

The Court: You used how much?

Mr. Unger: Two dollars seventy cents.

Q Then how many days did you go away from the farm between the time that you came there on the 29th of May and this occasion on the 28th or 29th of June? A Four days.

30 Q It wasn't seven days altogether? A No, nothing like that.

The Court: Four days straight?

The Witness: At different intervals.

By Mr. Campbell.

Q Were those four days the day you were permitted, one day a week off?

40

George L. Thompson, direct.

Mr. Unger: I object to that.

A It is in the contract.

Q And those days you were entitled to under your contract? A One day under my contract.

10

GEORGE L. THOMPSON, sworn in plaintiff's behalf.

Direct examination by Mr. Campbell.

Q Mr. Thompson, you know Jacob Heinochowitz? A I do.

Q When did you first meet him? A March 4th, something around the first time, March 10th. 20

Q Were you out in his place at Hackettstown in May, 1923, the first part of May? A I was.

Q And what conversation did Mr. Heinochowitz have with you regarding the management of the hotel in Hackettstown, New Jersey, if any?

Mr. Unger: When was this?

Q The early part of May, 1923. A He wanted me to take full charge of all the employing of help and the management of the place. 30

Q And did he instruct you to hire such help as might be necessary for the efficient—

Mr. Unger: (Interrupting.) I object.

The Court: The question is not finished.

Q —as to make it necessary for the efficient conduct of the hotel business at Hackettstown? 40

George L. Thompson, direct.

Mr. Unger: I object because it is a leading question.

The Court: I will sustain the objection.

10 Q What conversation did Mr. Heinochowitz have with you, if any, relative to employing chefs, stewards or other help for the conduct of the hotel business at Hackettstown, New Jersey, for him?

A He sent me out a number of times to get help.

The Court: No. You are asked what conversation you had.

The Witness: He told me to hire all the help for the hotel and the grounds.

20 Q Acting under those instructions or orders did you hire anybody during May, 1923, for Mr. Heinochowitz? A I did.

Q Whom did you hire, roughly speaking, and what was the nature of the duties of the persons whom you did hire? A I hired Mr. Richardson as chef, chief chef, and I hired carpenters and bricklayers and cement workers and painters and decorators, and things like that.

30 The Court: You depend, I suppose, upon your Exhibit P. 1. Why not go right down to what took place?—whether he was the general manager or not, if Heinochowitz instructed this witness to draw this contract and sign his name to it, who is bound by it?

Mr. Campbell: We thought it might be he had general orders to employ, and if we can prove our agency apart from specific instructions—

40 Mr. Unger: Then I must say that the cause of action which is attempted to be proved is

George L. Thompson, direct.

different from that set forth in the state of demand. They are relying on a written contract. They say a true copy of the contract is annexed to the demand.

The Court: There are two cases we are trying here now.

Mr. Unger: I refer to the second suit 10
where the claim is under a written contract.

The Court: The pleadings in the first suit do not indicate that it was under a written contract, do they?

Mr. Unger: No; but in that second suit they do.

The Court: All right. I will admit it in the first suit.

Mr. Unger: I think I am entitled to know 20
upon what they are relying here, because we are trying the two cases together.

The Court: We are relying on two different things in two different suits.

Mr. Campbell: If your Honor please, in drawing the state of demand, I failed to attach a copy of the written contract in the first suit, and I would like to amend both counts of the first suit and attach a copy of the written contract. 30

The Court: Then this evidence would not be admissible.

Mr. Campbell: Then I make that amendment.

Mr. Unger: I am satisfied. You are suing now on a written contract in both suits?

Mr. Campbell: Both suits.

George L. Thompson, direct.

Q Did you have any conversation with Mr. Heinochowitz in May relative to the employment of a chef? A I did.

Q Will you tell the Court what was the nature of that conversation?

10 The Court: Give the time.

Q In the early part of May. Give the date. A In the early part of May, I would say, around the middle of May. It started to be actually, I would say, the fifteenth. We were getting pretty well under way to open up, and Mr. Heinochowitz had had a number of parties there, week-end parties, and I had to do the cooking myself previous to May 15th, and in fact previous to the time—

20 The Court: (Interrupting.) Go ahead and give us the conversation. I don't want a history of this hotel.

A (Continuing.) I told him I had too much to do; I couldn't do the cooking and look after the place. He said, "We will get a chef." He said, "You go to New York and get a chef." So he and I went to New York ourselves and went
30 around to a number of employment agencies on the East Side, mostly around the Bowery, at his suggestion, and we couldn't get anybody. We went along the Bowery to the different employment agencies. I said, "They are not experienced people down here; they are mostly cheap people. We better go uptown to the employment district, which is on Sixth avenue." He said, "I am going out to the farm. You go up yourself and see what you can do." I went around to see
40 a number of them and I couldn't get a chef. He

George L. Thompson, direct.

didn't want to pay more than twenty dollars a week. I wrote him a letter that night, I believe.

Mr. Unger: Wrote whom a letter?

The Witness: Mr. Heinochowitz, at different times. I don't know if it was the same time. I had been looking a number of days, 10
looking for chefs and hotel help, and couldn't get them at the price he wanted to pay. So I went over to the Brighton Employment Agency, to Mr. Reilly, who had been furnishing me with help at different times, and whom I knew very well, and I told him—

Mr. Unger: (Interrupting.) I object.

By the Court.

Q You need not tell what you said to Mr. 20
Reilly. A That I had to have a chef.

Q Not what you told Mr. Reilly at all. As the result of going to Mr. Reilly what happened? A He recommended Mr. Richardson to me, telling me he was an experienced chef and a good chef, and he said he had interviewed one or two other hotel men, but, he said, he hadn't gone out of town yet; and if I could get him to take him, that he was a very good man. 30

Q Did you tell all this to Heinochowitz? A I did. I called Mr. Heinochowitz up from the employment agency and I told him. I caught him at his home in Newark, and told him what experience I had had. So he wouldn't decide on Mr. Richardson. Then he said I better keep going and see what I could get. I had been out for cooks previous to that.

Q I don't care about that. On this particular occasion he told you he wouldn't decide; for you 40

George L. Thompson, direct.

to go ahead? A To go ahead and see if I couldn't get something.

Q What did you do? A That was pretty late. I couldn't remember the date exactly. But I kept on going along every day. I did all I could to see what help I could get.

10 Q Did you report to Mr. Heinochowitz what the result of your efforts were? A Yes.

Q What did you report to him? A I told him Mr. Richardson would not come under a hundred and fifty dollars up to the first of July and after that he wanted two hundred dollars, and it was up to him to decide.

Q What did he say? A He said, "You go ahead. You go back and get him," and he wanted me to make a special trip back to get him, and I went back about the latter part of the week, the 20 18th or 19th, in or around those dates, of June.

By Mr. Campbell.

Q Of June? A I mean May. And I got him. I interviewed Mr. Richardson in the employment office, and I told Mr. Reilly I would take him.

Q When did Mr. Richardson report? A He reported on the 29th of May, the day before Decoration Day. 30

Q Did you see him arrive at the hotel? A I did.

Q In whose company was he at that time? A He came in a Ford with Mr. Heinochowitz. He had telephoned up to the hotel. I came up from the city that day, and I said, "The chef is going to be sent out today sure." So he said, "Why didn't you bring him with you"? I said, "Well, he had to get some clothes and things, and I had other work to do after." He said, "Are 40

George L. Thompson, direct.

you coming up alone"? He gave he "blazes" for not bringing him with me. I said, "Don't worry. I got the employment agency's word that he would be here." So he came out, and that is the end of it.

Q Did you in Mr. Heinochowitz's presence discuss the terms of the agreement or draw any contract with Mr. Richardson? A I did. 10

Q I show you this contract P. 1 and ask you whether that contract was drawn by you. Is that your handwriting? A Yes, sir, that is mine.

Q In whose presence was that contract drawn? A In Mr. Jacob Heinochowitz's and Mr. Richardson's.

Q And who instructed you to draw that contract? A Mr. Jacob Heinochowitz.

Q Will you tell the Court the conversations leading up to the drawing of that contract? A I will. I was outside working, supervising with some carpenters, some cages to be made for wild animals that he had. They were to be in cages, and we had boxes, crates. We had to get them out of the boxes that night. 20

The Court: I don't care about that. You were out there doing that work.

A (Continuing.) And Mr. Heinochowitz came to me and said, "That was a dandy dinner, or supper, that man got up. He is a good cook." He said, "Did the employment agency or you put him under contract for the season"? I said, "No, I haven't got him under contract, unless the employment agency did." And he said, "Well, you are a hell of a manager," he said, "to bring a man out here. Suppose he don't like the place and goes back and leaves us on our uppers." He said, 30 40

George L. Thompson, direct.

10 “You better get him under contract.” I said, “I can’t leave this work”; and he made me leave the work and come inside and write the contract. He sat there. He dictated the contract all the way through. I wrote it out. His hands were dirty; he had grease or something on them; and he said he couldn’t draw up the contract. I asked him if he had a typewriter there. He said no, he didn’t.

20 Q Was this contract prepared in its entirety at one time or was any part of it added after the instrument had been signed? A No, sir; it was prepared right there and then. Mr. Richardson excused himself for a few minutes. He said, “I have something on the fire in the kitchen,” and he would be back. He got back when the contract was finished; and it was finished. And Mr. Heinochowicz asked him if that was satisfactory and he said yes. So I says, “Sign this, Jake.” And Jake says, “What are you manager for? You got charge of the help around here. You sign it.” So I said, “Well, I will sign your name to it. You can sign your name.” So I signed his name first and I signed my name, and then he put dittos. He took the pen out of my hand and he said, “That is just as good.”

30 Q I call your attention to this clause: “One day off a week, off duty, with pay.” Was that drawn after the contract was signed? A That was drawn before the contract was signed.

Q Was that read off to Mr. Heinochowicz in Richardson’s presence prior to the time it was signed? A Yes. Mr. Heinochowicz has a contract just like that.

The Court: Signed by all the parties?

40 The Witness. Yes; but he made me sign his name; and then I put up there “George L.

George L. Thompson, direct.

Thompson, manager," and he grabbed the pen out of my hand and he said, "There," and he made a couple of dots.

Q Did Mr. Richardson use the same pen used in the preparation of this contract? A No. If I remember right, he had a fountain pen.

10

Q How long did you remain with Mr. Heinochowitz after the contract was signed? A About a week.

Q And during the time that you were there was Mr. Richardson's work satisfactory? A Very satisfactory, yes, sir.

Q Did you ever hear Mr. Heinochowitz express his satisfaction with the work or not?

20

The Court: Express what?

Q His satisfaction with the work of Mr. Richardson during that period. A There was only one time he asked me. He said, "There is only one objection I got to Mr. Richardson's cooking. He is a good Christian cook; but," he said, "he can't cook kosher." So I said, "Well, I don't know." I said, "Naturally, you couldn't expect a colored cook to be able to cook kosher." He said, "Well, they do down on the East Side." So I said, "We will find out." So we went in and I asked Mr. Richardson if he could cook kosher and he said yes, he could cook Jewish, or kosher. And that was the only time there was any question about his services not being satisfactory.

30

Mr. Campbell: Have you a letter dated May 15th signed by George L. Thompson that you were served with a notice to produce?

40

George L. Thompson, cross.

Mr. Unger: We have none. We have a letter dated May 15th, but the original is not like your carbon. If you want the original I will produce it.

10 Q I show you this copy of letter and ask you whether or not you wrote that letter and signed it. A I wrote that letter. It is very much like my typewriting, yes.

Q Did you mail the original of that letter? A I did.

Mr. Campbell: I offer this in evidence.

Mr. Unger: Objected to. Mailing has not been proven.

20 Q To whom did you address that letter? A To Jacob Heinochowitz.

Q At what address? A Whatever it is. I didn't notice the address—Hackettstown, New Jersey.

Q Did you affix a postage stamp to it prior to mailing it? A I did.

Q Of what denomination? A Two-cent stamp.

Q Was there anything in that envelope besides that one letter? A Not to my knowledge, no.

30

Mr. Campbell: I offer it in evidence.

Mr. Unger: Did you personally mail it?

The Witness: I did.

The Court: It will be admitted.

(Marked Exhibit P. 4.)

Cross examination by Mr. Unger.

40 Q That letter was written on the 15th of May?
A Yes.

George L. Thompson, cross.

Q Do you recall writing another letter that day? A Well, I may have, yes, because I was writing letters every day when I was in the city. If I would stay in the city over night I would write.

Q Did you personally typewrite those letters? A No; my wife typewrote them all.

10

Q How do you know you mailed them? A I always mailed the letters after she comes home nights. She works in the daytime, and after she gets through with supper I give her the mail I have to write. I wrote Mr. Heinochowitz every day when I would stay over night.

Q How do you know you mailed that letter? A I am positive.

Q How many letters did you mail that day to Heinochowitz? A That is hard for me to recall. I might have mailed two or three. I might have mailed only that one. I can't recall that. I had a lot of shopping to do.

20

Q Wait a moment. If I should show you another letter dated May 15th—I do show you another letter dated May 15th, 1923, and ask you if you have a recollection of mailing this one? A That is when I was doing booking for the hotel.

Q Never mind. I asked you if you recall? A Yes, I do.

30

Q You remember mailing that one, too? A Yes, I am almost sure; yes.

Q You are sure? A Positive. This is not in reference to this case.

(Marked Exhibit D. 1 for identification.)

Q When you came there, and you were there the night that Richardson arrived—I understand you were outside doing carpenter work? A Not

40

George L. Thompson, cross.

when Richardson arrived. I was getting stuff ready for the dinner in case—

Q (Interrupting.) When it came time to prepare the contract, when Heinochowitz called you, you were on the outside? A I was on the outside.

10 Q Doing what kind of work? A I was supervising some kind of work; they were building cages.

Q Was it light enough for you to see? A Well, we had lanterns. He had jack lanterns that he carried. It was rather dark.

Q Were people building cages at nine o'clock at night? A We built them later than that. We built them as late as twelve o'clock at night, to take the animals out of the crates.

20 Q And you were asked to go in? A Yes, he asked me to go in.

Q You were asked to go in and prepare a contract? A Yes.

Q And you came in and prepared it? A I did.

Q And Mr. Heinochowitz asked you to sign it? A He did.

Q And you did? A I did.

Q And you wrote his name? A I did.

Q He told you not to? A He didn't.

30 Q Didn't you say that when you asked him to sign it—when he asked you to sign it, you asked him if with his name, and he said no? A I asked him to sign his name. He said, "You sign it. You are manager." He said, "You sign it."

Q And then you did? A I did.

Q And then Richardson signed it? A And then I put "By G. L. Thompson," and then he put two little dots.

Q Who did? A Mr. Jacob Heinochowitz.

40 Q After you had finished signing it he put the two dots? A He put the two dots.

Jacob Heinochowitz, direct.

Q Is there any doubt about that? A No doubt whatever.

Q Are you sure he didn't put the two dots on before you signed it? A No; he didn't.

Q Is Mr. Richardson mistaken about it? A No.

Q He isn't? A No.

10

Q Well, he said it the other way around. A I don't see how he could. The two dots were put there after he already signed the name.

Q And over it he O. K.'d his signature? A He put it right on the line, with his own signature.

Q That is, after having told you to sign? A And he told me to sign first.

Q Won't you listen, please? After having told you to sign and after you had actually signed, in order to identify the instrument he put two dots on it? A He did.

20

Q Not his initials? A Not his initials.

Q Not his name? A Not his name.

Q Not any mark, except the two dots? A Except ditto.

Q Those two dot marks were not put there for the purpose of indicating the place where you were to sign, were they? A No, sir.

30

PLAINTIFF RESTS.

JACOB HEINOCHOWITZ, the defendant, sworn.

Direct examination by Mr. Unger.

Q Mr. Heinochowitz, when did you first get acquainted with Richardson? A The 29th of May.

40

Jacob Heinochowitz, direct.

Q Did you call for him? A I was in town, and I received a telephone call to stop at the American House and pick up the chef.

10 Q Who called you? A My brother called me up, and Mr. Brooks from the store. I went in to buy, and when I came out of the place he said, "You want to stop in the American House. There is a man waiting for you."

Q You went there and found Richardson? A Yes.

Q And you took him up to the farm? A Yes, sir.

Q Before you got him up there, while you were on your way, did you discuss any terms with him? A No, sir.

20 Q After you got up there did you turn him over to anybody? A I asked him on what mission he was, and he showed me a card from an employment office.

30 Q And that is the card that was offered in evidence? A Yes. He showed he that card and he said the employment office, whatever the name is, sent him out here; that Mr. Thompson was there and asked for a chef. I told him, "Now, Mr. Thompson had no reason to ask you for a chef." And I called Mr. Thompson up. He brought some boarders of his, and I said, "You told me you have been getting a cook of your own. You didn't say you would bring a colored chef here." He said, "I couldn't get any." Mr. Thompson agreed with me to work on commission from June 15th.

40 Q Never mind about that. Just refer to the employment of the cook. A He said, "Leave him stay after Decoration Day, which is tomorrow, and I will get you another man." I said, "My people are coming tomorrow."

Jacob Heinochowitz, direct.

The Court: I don't care about this.

Q I want to know what arrangement you made with Richardson, if any? A I made no arrangements.

Q Richardson stayed on, did he? A He stayed on to the following night.

10

Q Then what happened? A I went over with Mr. Thompson. We had disagreements at noon-time, and then Mr. Thompson went away and left me flat.

Q Then Richardson stayed on, did he, as a cook? A No, not for me. He made an agreement with my brother, with Sam.

Q He stayed there? A Yes.

Q Until what time? A He stayed two weeks, and he comes and asks me for money. I told him I wasn't paying him, because I didn't hire him. He said, "Well, let me have five dollars I need for fare." So I gave him five dollars in cash, and I said, "When you get the money from my brother you refund it to me." He comes back a day after and tells me his wife bought him a restaurant; that he will quit in a week.

20

Q When was this? A That was a day after I gave him the five dollars— He went to New York—the five dollars in cash.

30

The Court: Do you want me to understand that your claim is that your brother hired him?

The Witness: Sure. I loaned him five dollars to go to New York. He said he needed it. I wouldn't pay him any, because he didn't work for me. And he comes back the next day and Sam was there. I said, "Sam, Richardson wants some money. Pay him up for half

40

Jacob Heinochowitz, direct.

a month." Sam said to me, "I haven't a check here." I said, "Well, I will lend you a check. I will make out a check to you and you endorse it to Richardson." So Sam did make out a check for seventy dollars.

- 10 Q Is this the check (showing witness)? A Yes.
Q Made out to Sam Heinochowitz? A Yes.

Mr. Unger: I offer this.
(Marked Exhibit D. 1.)

- Q You drew the check and delivered it to him?
A Sam drew the check, I signed it, endorsed it and gave it to him. That paid him up for two weeks. Then he says to my brother and me—we were all present, and the electricians were in the
20 kitchen—

Q What is the electrician's name? A Hudson Gillard and Roy Applegate. And he said to me—

Mr. Campbell: Who said to you?

- The Witness: Richardson—not particularly to me. My brother was there at the time. He made the check. He said, "I might as well tell you now: My wife is buying a restaurant, and I expect to get possession of it in about a week, and I will have to quit." I said, "Won't
30 you stay until the end of the month?"

The Court: When was this conversation?

The Witness: When he got the check.

The Court: The same day when he got this check?

The Witness. The same day when he got this check.

- 40 Q Go on.

Jacob Heinochowitz, direct.

The Court: Go ahead. You said that he said his wife was buying a restaurant and he was going to leave.

A His wife was buying a restaurant and he was going to leave. He said, "I will give you a week's notice." I said, "Don't you want to stay until the end of the month? We want to open and get a cock of our own." We were open then; it was only for two days. 10

Q What did he say? A So he said he would, and the week rolled by, and he didn't show up for two days.

Q Did he tell you where he was going? A He told me he was going to settle up his wife's store and he would come back, and when he came back and told me he bought the store he said, "I had a restaurant, and the man burned his hand. And my lawyer, just as I got home, called up my wife, and we had to go there the first day, and it ain't finished, and I called up the second day and it ain't finished. Some day this week I expect a call." When he came back he said his wife bought the restaurant. He was away again; he was away two days the second trip. He said, "My wife went away." 20

30

The Court: Two days in succession, one after the other?

The Witness: One after the other, twice.

A (Continuing.) "My wife bought the restaurant and she doesn't take title until the first of the month. I can stay with you to the first of the month.

The Court: When was this second trip? 40

Jacob Heinochowitz, direct.

The Witness: A week after the check.

10 Q Go on. A He said, "I can stay with you till the end of the month, and then I have got to take care of the restaurant my wife bought from him." I don't know what street he mentioned; he may be able to tell you—Ninety-fifth street; a big place, and he was watching for a couple of days, and the reason he had to stay away, he had to go every day to see how much business he was doing. I said, "If you can better yourself, I wish you luck." And we were not in any argument at the time. A week after I was away, and I come back the next morning, and Harry and Roy and all the help said, "We got nothing to eat; he left this morning, not leaving anything, and took his things."

20 Q When was this? A The twenty-sixth of the month; and he took his things. I said, "He told me he was going to stay until the end of the month." I said, "That is a mean trick to do, to leave us without giving us any notice." And I said, "Are you sure he took the things?" So Harry went up to the room where he stayed. He said, "Yes." He said, "Did you see him take the things?" to the other boys, and Hudson Gillard.

30

The Court: He wasn't there?

The Witness: He wasn't there.

The Court: I don't want any conversations.

Q Did he come back? A The 29th he came back.

40 Q What happened then? A As I say, when I found that he wasn't there I called up Newark. My

Jacob Heinochowitz, direct.

brother was in Newark at that time. I said, "Sam, he left us flat."

The Court: Never mind what you told Sam.

Q What did you do after he had left? A I called up Sam to get in touch with Mr. Tyler to bring a crew.

10

Q A new crew? A A new crew. Sam did presumably get in touch with Mr. Tyler, and Mr. Tyler came out the next day with a chef. I think it was the 27th.

The Court: This was the 26th you say this man left?

The Witness: Yes; but I called up Newark and informed him that we got no chef, and my brother communicated with Mr. Tyler the same day, but he didn't come till the following day.

20

Q Did he bring anybody with him? A He brought three people—a chef, a dish washer and a second chef, a potato peeler.

The Court: When did this man come back again after he left on the 26th? When did he come back?

30

The Witness: The 29th.

The Court: Is that when he came back?

The Witness: Then he came back. Mr. Richardson was told we had a chef already; we had help; we had everything; and Mr. Tyler was there; he brought his people. He came back and he said, "I want my money." I said, "Mr. Tyler, make out his time." He asked when he got there; Mr. Tyler didn't know; and I told him when he got there.

40

Jacob Heinochowitz, direct.

Q Did he make up the time? A The 29th or the 30th, when he came back; either the 29th or the 30th.

Q Whatever day it was, did Tyler make up the time? A Yes, sir.

Q Did he make it up on a slip? A Yes, sir.

10 Q Is this the slip (showing witness)? A Yes, sir.

Q Go ahead. A Mr. Tyler made up the time.

The Court: Did he make it up in this man Richardson's presence?

20 The Witness: Yes, sir. We were in the lobby, where the desk is. Mr. Tyler sat down. I told him when he got there, and I told him how many days he was present, and he figured it out as twenty-four days, I think—I don't remember—at the rate of a hundred and fifty dollars a month. And Harry said he gave him three dollars in cash and a dollar's worth of medicines—some soaps and different things; and when he went away the second time he asked me for money again, and I told him I didn't have any, but I would lend him my railroad ticket.

30 The Court: How many days did you say you figured it up?

The Witness: Two days absent, and the last time three. I said, "I will let you have my railroad ticket."

Mr. Campbell: What date was that?

40 The Witness: The 29th or the 30th, when he came there for his money, the third day, when he was away three days. I told him I would lend him my railroad ticket. It cost me \$13.35 ten trips; so two trips would cost

Jacob Heinochowitz, direct.

him \$2.70, while the other way would cost him four dollars; it would save him a dollar and thirty cents. So I gave him my ticket, and he brought back my ticket; and took off \$2.70 for two trips.

Q What else was taken off? A When he was about two weeks in the place I seen him wear a suit that belonged to me. 10

The Court: I am not going to hear all this harangue about what he saw two weeks before and what he thought. Let him answer the question.

A (Continuing.) We took off nine dollars for two suits. I showed him the bill what it cost me. He said he didn't take it. He said first Harry took it and gave it to him a present. I sent for Harry and Harry denied it—"What right have I got to take the things and give them away"? He said two suits. He said, "Thompson—" Because Thompson wasn't there he said, "Thompson gave them to me." I said, "How can Thompson give them to you? Thompson wasn't here. Thompson was employed one day when you got here, one day. You didn't see Thompson. Thompson hasn't got a key to the room." He said, "I will wash them and give them back." I said, "I can't take them back after they are washed and used." So we took off nine dollars. Mr. Tyler made out the slip and we gave him a check for twenty-six dollars, and Mr. Tyler showed him the slip. 20 30

Q Did you give him the slip with the check? A Yes, sir. 40

Jacob Heinochowitz, direct.

Q Is this the check (showing witness)? A Yes, sir.

Mr. Unger: I offer both the slip and check in evidence.

10 Mr. Campbell: I object, your Honor, unless there is some evidence to show that the defendant ever accepted them.

The Court: I will allow them for what they are worth.

(Paper with the time worked out on it marked Exhibit D. 2 and the check is marked Exhibit D. 3.)

Q Then what happened? A He takes the check and the slip, and he said, "Can I sleep here"?
 20 I said, "Yes, you can go into the bungalow where the electricians are." He goes down, and about an hour later he comes back and throws the check down and he said, "You can't do me. Here is your check and here is your slip. You have got to give me nine dollars more. I won't accept the check." I said, "We didn't take more than what you were to pay me." I showed him the bill what it cost me. "You said first Harry gave them; and
 30 Thompson wasn't here, and Thompson couldn't give them to you." He said, "I will give them to you back; I will wash them." And he was very much intoxicated. He couldn't stand on his feet. And he went over to the table and ran for a knife, and he banged on the table. He said, "I will get justice for myself if I can't get it." I got scared. I said, "You better call the police; you better call the police; he might kill me." Mr. Roy Applegate, Hudson Gillard and my brother grabbed for the knife and tried to pull him away. He was
 40

Jacob Heinochowitz, direct.

shouting for an hour, and used all kinds of vile language, and he said, "I will try and get you. I got five thousand dollars' worth of bonds, and I am going to spend it all and get even with you." My family was there, and I chased them out. I didn't want them to know the kind of language he used on me. I got small children, the age of ten and twelve, and it didn't look good for me; and I chased my wife out. They were in the kitchen alongside of the dining-room; and it took Mr. Tyler, Mr. Gillard, Roy Applegate and my brother at least an hour to calm him down. And then Mr. Applegate and Sam took him down to the bungalow. He had a bottle of gin; and they put him to sleep. The next morning he didn't show up. 10

Q Where did he go? 20

The Court: If you know?

A He went back to New York.

The Court: Do you know that of your own knowledge?

The Witness: They told me.

The Court: All right. Strike it out. 30

Q Did you see him after that? A No, I didn't see him.

Q Then he left the check there? A He left the check. He said— He came back and was intoxicated, and was going to kill me, and he grabbed for a knife, and it took them an hour to get it back.

The Court: When he took the check did he also take the time sheet that has been marked D. 2? Did he take them both? 40

Jacob Heinochowitz, direct.

The Witness: Yes, sir. Mr. Tyler handed to him the check and the letter.

The Court: Did he take them away with him?

10 The Witness: When he went down he was sore. He was nice and gentle when I took off for the suit. I told him I took off what it cost me. I didn't care whether Harry gave them to him or Thompson gave them to him.

Q Has he ever made any demand on you for money or salary or wages other than the demand which accompanied the suit here? A He called me up one day about a month later.

20 Q What did he say? A He says, "If you send me a check and don't take off them suits—they are washed and they are cleaned—I will send you the suits back, and I will take the check." And I said, "I won't do that. I have nothing to do with it. Get in touch with Sam."

Q You were willing to pay him for the time he was there even though you claim you didn't do the paying? A I wasn't ready to pay him. Sam was paying him. I was only financing the proposition, and I had nothing to do with it.

30 Q Did you ever sign any contract with him or authorize anybody to sign any? A No, sir.

Q I show you Exhibit P. 1, which is a written contract, and ask you if you ever saw that before it was in court here? A Never.

Q Did you tell Mr. Thompson to go ahead and draw a contract and sign it for you? A No, sir.

40 Q Did you make two dots there either before Thompson signed or after he signed? A I never make dots. I can sign my signature.

Jacob Heinochowitz, direct.

Q Did you ever put two dots there either to indicate to Thompson where he should sign or to signify your approval after he had signed? A No, sir. The evening they claim, I wasn't even with them. I can prove it with Mr. Shanefield where I was.

Q Where were you that night? A Mr. Shanefield, Mr. Katz and Mr. Davis, four, five lawyers; there was a party of sixteen. 10

The Court: Where were you?

The Witness: They got there about seven o'clock.

The Court: Got where?

The Witness: To my place. We had supper, and I went away with them, and we took a walk. You see, I showed them the bungalows that they put up to sleep in that night, and I gave them an outing. 20

The Court: What time did you get back to the house after this walk with these lawyers?

The Witness: We got back probably ten o'clock, and we stayed on the front porch until twelve, and then they went back.

Q Did you go into the dining-room and meet Thompson and Richardson there and oversee the writing of this contract? A No, sir. 30

Q Did anything like that happen? A No, sir. Why, it is a surprise to me. Thompson said—

The Court: (Interrupting.) Never mind. You answered the question.

Q Did you tell Thompson, "Hurry up and get the fellow tied up with a contract so that he 40

Jacob Heinochowitz, cross.

shouldn't leave or quit''? A I didn't talk to Thompson at all.

Q Did you have your hands soiled from working on the car so that you were unable or unwilling to sign this contract? A No, sir.

Q Were you working on the car that night? A
10 Never do.

Q Did you ever tell Richardson to bring back that contract so that you could look at it and tear it up and you would give him a new contract? A I told you Thompson was never there that day.

The Court: Answer the question.

A No, sir.

Q Did you ever tell Richardson that? A No,
20 sir.

Q And did you ask him, as he testifies, for this contract several times? A No, sir.

Q And did he tell you that he couldn't give you the contract? Did anything like that happen? A I never talked to him about it. I didn't know what contract means.

Cross examination by Mr. Campbell.

Q So you don't know what a contract means?
30 A I know what a contract means, but not a restaurant contract. I never made restaurant contracts. I know a real estate contract.

Q And when you said you didn't know what it meant you told us what it not so? A What do you mean?

Q Just what I say. A I never made a restaurant contract. That isn't a contract what he
40 showed me.

Jacob Heinochowitz, cross.

Q Were you around the hotel much of the time up at Hackettstown? A I was there all the time. Once a week I got down.

Q Mr. Thompson was around the hotel, too, say, from May 25th to June 7th, quite a lot? A No, sir.

Q Where was he at that time? A I don't know. I didn't follow Mr. Thompson. He didn't work for me. 10

Q He wasn't there during May? A The contract was signed the 7th, and seen him the 9th.

Q You saw Mr. Thompson after the contract was signed? A I didn't see him in my place.

Q Did you see him in the place after the contract was signed? A No, not that contract; the contract I had. The contract that I signed with Thompson was the 7th. I had an appointment with him the 9th. 20

Q The 9th of May? A The 9th of May, and his contract fell through; but we had a discussion, and he laid down on it. We had a different proposition.

Q You never saw Mr. Thompson then from the 9th of May until when? A Mr. Thompson came out with a new proposition.

The Court: You are asked when you saw him. 30

The Witness: I seen Mr. Thompson the day before Decoration Day.

Q That is the first time you saw him again? A Yes, sir.

Q And did he stay there that day with you? A He stayed that night.

Q Did you talk to him at all? A When he did come, I did. 40

Jacob Heinochowitz, cross.

Q Did you see him the next day, Decoration Day? A I did.

Q When you said you didn't talk to Mr. Thompson on Decoration Day you didn't mean that at all? A I didn't say about Richardson. I talked about other matters, but not Richardson.

10 Q Do you want me to understand by what you say that from May 7th or 9th to May 29th or 30th you didn't see Thompson at all? A No, sir.

Q Did you ever talk to Thompson between May 9th and May 30th directly or by telephone? A All correspondence came to my brother, came to Newark.

Q I ask you if you ever talked to him either in person or by telephone? A No, sir.

Q How far is it from the American House to your hotel? A A mile and a half.

20 Q How long does it take to ride in a Ford? A Oh, about ten minutes.

Q And while you were riding in a Ford you talked to Mr. Richardson, did you not, and took him out that day? A No, sir.

Q You didn't sit there like a mummy and say nothing, did you? A I had another man with me. I didn't know what his mission was until he got up there.

30 Q Didn't you tell the Court that you asked and that he produced his card and told you? A When he was up there.

Q Not until after he got up there? A I told you, if you will let me explain what happened.

The Court: You answer questions.

The Witness: He brought a card.

40 Q You never knew then what Richardson was there for until after arriving at the hotel? A Yes, sir.

Jacob Heinochowitz, cross.

Q Is that right? A (No answer.)

The Court: Is that right?

The Witness: I didn't know what his mission was. I thought we were going to take him back when he got up there.

Q Then you knew he was coming out there for a position as chef? A I didn't know until they called me up at Sol B—— to pick up a man at the American House. 10

Q You didn't know what this man's mission was until he got to the hotel? A Five or ten minutes.

Q Do you want this Court to believe you called to pick up a stranger at the hotel and asked no questions? A They told me when they called up, "Pick up a man in the hotel; he is going to your place." 20

By the Court.

Q You didn't know what he was coming for? A He told me when he was up there.

Q When you picked him up at the American House you didn't know what he was coming to your hotel for, did you or didn't you? A I didn't know until he told me. 30

Q When did he tell you? A When I got to the door. He was out there with the bag.

Q The door of what? A The American House. He said, "I got a card here to come as a chef to your place." I said, "I don't talk to you. I don't hire people. We will go to the hotel and we will talk business there." I didn't say anything. When I got there Sam and Mr. Thompson came out. He said, "Are you the chef?" He said, "Yes." He 40

Jacob Heinochowitz, cross.

said, "I got a cook in the employment office." I said, "Mr. Thompson, you said you were going to give us a Hungarian cook. My people won't stand for a colored cook anyway." And he called me aside. I said, "I want nothing to do with that." Sam said, "I have a party the following day. Let him stay a couple of days."

10

Q What did Sam have to do with it? A Sam was the owner of the hotel. I only financed it.

By Mr. Campbell.

Q Then you did know before you got to the hotel he was coming there for a position as chef?

A They told me to pick somebody up.

Q You claim you had a party of friends—Mr. Shanefield and fifteen or twenty other lawyers? A

20 There were sixteen.

Q What time did they arrive? A They arrived about six o'clock or seven.

Q They were your guests? A Yes.

Q And you were anxious to get a meal for them? A That is why we got a chef.

Q Oh, you did get a chef, then, did you? A Yes.

Q All right. That is what I wanted to know. Mr. Richardson cooked that meal, did he not, for the guests? A Yes.

30

Q And you know that he cooked it? A Yes, sir.

Q And they were your guests? A Yes, sir.

Q You told the Court on direct examination that Mr. Richardson came to you and said he was going to leave on account of his wife, she was going to open a restaurant, didn't he? A Yes, sir.

Q And you asked him to stay until the first of July? A Yes, I did.

40

Jacob Heinochowitz, cross.

Q And when he came for money he came to you and you gave him five dollars, didn't you? A I lent him five dollars; I didn't give him five dollars. I told him I wasn't paying him; he didn't work for me.

Q And when Mr. Richardson went away before July 1st you had to get somebody else—Mr. Tyler, didn't you? A I didn't. 10

Q Well, you told the Court. A I called up to Newark and told my brother what happened. I told my brother he left us flat before the first. He said he was going to stay to the first.

Q You said he left "me." A Not me; he left us. I had an interest to finance him, but not to run the place.

Q Mr. Richardson went away on the 26th or 27th and you gave him your railroad ticket? A No; that was previous to that; that was on the second trip. 20

Q When was the second trip? A That was a week after the check. He went away three times. He was away once two days, once two days and the last time he was away three days. Your Honor, I wish permission to bring up—I want to bring up why I say we needed this chef.

The Court: Your counsel will take care of that. 30

Q You asked Mr. Richardson to stay until July 1st, did you not? A He told me that he was quitting. I said, "Why don't you stay until the first?"

Q What were these suits, Mr. Heinochowitz, that you claim Mr. Richardson took? A Two white linen navy suits. 40

Jacob Heinochowitz, re-direct.

Q What were they used for—cooking? A No. I bought white suits to sell them to people who come out there, to sport the white suits, to walk around with navy suits, white pants and white coats.

10 Q All of these conversations to which you have testified relative to Mr. Richardson remaining at the hotel were with you, were they not? A No. That was when I gave him the check I said, “Why don’t you stay with us until the first”? I was there to sign the check, and wasn’t present when the conversation happened.

Q Mr. Heinochowitz, did you at one time take Mr. Richardson to the station on his way to New York? A I never took him to the station. I lent him a ticket once, I remember, the second trip.
20 He made the first trip; I lent him five dollars.

The Court: You answer the question.
Don’t volunteer.

Q Do you know whether or not Sam took Mr. Richardson to Newark? A I couldn’t tell you.

Q For the second trip? A I couldn’t tell you; I don’t know.

30 By Mr. Unger.

Q What did you mean when you say you needed a chef? What did you want to explain to the Court? Make it brief. A I got a letter from Mr. Shanefield a week before asking me whether it was possible for me to accommodate him over Decoration Day, and I called him up and I said I wasn’t open until the first of July; that it would be impossible for me to do so. Two or three days
40 later I was in Newark, and my brother tells me

Jacob Heinochowitz, re-cross.

Mr. Thompson was in his place and says he was successful in getting about twenty delegates out on Decoration Day from the different insurance companies. I got the names and everything written down; that if he brings them out and they like the place Decoration Day, of course, we couldn't charge these people for the dinner; but if it pays, why, we will give them a good time; if Sam will give fifteen dollars for a railroad ticket he will bring them out, and I should prepare a dinner. So I told Sam I wasn't prepared; I had no chef; I had nobody; how could I do it; and I left the place. 10

The next day I went back here. The next day Sam called me up and said, "Thompson said to me he has got a chef of his own; he is going to bring him out for Decoration Day." "If that is the case, there is an opportunity for the boys who asked me at the same time to have dinner for them." So I called up Mr. Harris' office and I told Mr. Shanefield—whoever took the message—that I will be ready for them, too, because we are going to make a party for certain people Mr. Thompson is going to bring out, and they would be welcome, too. So when I met Mr. Richardson he told me he was a chef and gave me a card. I put it in my pocket and never looked at it. And I went and done some shopping, as he admitted, and I went to the American House and asked them if they can lend me a dish washer for one day. 20 30

By Mr. Campbell.

Q You had parties coming out at various times between the thirtieth of May and the first of July? A I had Harris' office come again in July. 40

Samuel Heinochowitz, direct.

The Court: You were asked between the 30th of May and the 1st of July.

The Witness: I invited some friends to come on Sunday for an hour or two.

The Court: Did you have any pay parties out at that time?

10 The Witness: No, sir. We were not open for business until July.

Q Why did you tell the Court that Mr. Richardson had left you flat if you didn't need any chef, when you had nobody out there? A Well, the 1st of July, when we expected business; we were feeding the electricians, two boys, and the stable boys. There were five men out there taking care. We had to have some meals cooked.

20 Q As a matter of fact, you had dinner on the 29th of May with Mr. Thompson and with your own family, didn't you? A No, sir, never sat with Mr. Thompson.

SAMUEL HEINOCHOWITZ, sworn for the defendant.

30 *Direct examination by Mr. Unger.*

Q When did you meet Richardson the first time? A The 29th of May.

Q Who brought him? A Brought up by my brother.

Q Did you make any arrangement with him to pay him salary? A Not that day, but the next day.

40 Q What was said? A That day he came up; we were too busy to do anything. The next day

Samuel Heinichowitz, direct.

after lunch I sat down and spoke to Mr. Richardson. I asked him whom he was sent by, how long he worked, and price, like I would any laborer; and I told him that we were not open for business as yet; that we expected to open by the first of July, and up till then that he was to do cooking and dish washing, for the simple reason there were four of five people to cook for; probably it will occur sometimes on Sunday that some friends may come out, and we could be prepared for it; and the agreement was for that month a hundred and fifty dollars. 10

Q Was any contract signed by you— A No, sir.

Q —at that time? A No, sir, never.

Q Did you ever hear of any contract being signed by anybody? A No, sir. 20

Q Did Richardson keep on working there continuously? A Well, he went off, on and off. He was off three times during the month.

Q How many days? A Two together and three.

Q Were you present when he received his half month's pay on the 16th of June? A I gave it to him. I was to pay him.

Q Did he say anything at that time? A No. He said he was going off for a day or two; that he wanted money. 30

Q At any time after that did he say anything about quitting? A Yes.

Q When was that? A He told me his wife was buying a restaurant on Ninety-fifth street and Amsterdam avenue, and that he expected to go out there and run the place, but he had a doubt, there was only a one-year lease on the place; and I personally disadvised him to invest money on a one-year proposition. He said he would have 40

Samuel Heinochowitz, direct.

to go in a week or so, and he thought it would be advisable for him to give a week's notice.

Q Who was there? A Mr. Richardson and myself, in the lobby, and Mr. Roy Hudson.

Q This man back here (indicating)? A The electrician.

10 Q What was said when he said he would have to leave in a week? A Well, while we were sitting there talking he said he would have to leave. So I was going to talk, but my brother sprung up and said, "Why don't you stay till the first of July and give us a chance to fix things up by then? We may get a chef." He said, "I will let you know, and then I may be able to do it." He went away, and the second time he came back and said he thought he could stay with us until the 1st of July,
20 and in the meantime I would look for another.

Q Did he go away after that? A Yes.

Q When? A I should judge about the 25th or 26th.

Q Did you notify your brother that he left? A I was notified that he left.

Q By whom? A By my brother Jake.

Q What did you do then? A I got in touch with Mr. Tyler and told him I needed a chef.

30 Q Who was Mr. Tyler? A He was our manager.

By the Court.

Q How long had he been your manager? A Well, we were just staying down for two or three weeks.

Q How long had he been at the hotel? A He wasn't in the hotel.

40 Q He had not been the manager? A No.

Samuel Heinochowitz, direct.

Q He wasn't manager? A No. There was nothing to manage.

Q What did he do—went outside for you? A Yes. He went out to see people.

By Mr. Unger.

Q You got in touch with him? A Yes, at the Hotel Albert, on the twenty-sixth. 10

Q In Newark? A No; New York.

Q Then did Richardson come back? A Richardson came back on the 29th—no; the 30th; I am not sure which of those two days—in the evening, with a tan suit case.

Q Who was there when he came back? A Mr. Tyler, Mr. Heinochowitz, Mr. Gillard, and, of course, several other people there; they were disinterested. 20

Q What happened? A When Mr. Richardson came back he no doubt seen there was a crew.

The Court: He said, "No doubt he seen there was a crew." Tell what happened.

A (Continuing.) He says to me, "Sam," he says, "I see you got a new crew." I said, "Yes, because you said you were going to leave us on the first. My brother called me up and said you left us a few days before the first. How can we rely on a man? And, furthermore, we didn't know we could get a man after the first. We had to prepare for the opening." I said, "You know it takes a few days to prepare things for an opening, and, of course, we are up in the mountains; we can't get everything in two minutes." He said, "Well, it is all for the best." He said, "Are you going to give me a check"? I said, "Yes." I 30 40

Samuel Heinochowitz, direct.

called in Mr. Heinochowitz and Mr. Tyler, and I had Mr. Tyler make out the slip while I was making out the check. Everything was roses until the suit proposition came up. Then he started to argue with my brother. But after my brother had proved to him whereby he wasn't making anything on the suits, so he agreed to take the check of \$26.90 in full payment. He went away and was gone about an hour.

10 Q Did he take the check? A Yes, the check and the slip that Mr. Tyler had made out for him. I had to show him the days he was absent, the days he worked, the amount due, the amount received on account, and the balance due him. So he took the check and the slip; he went down with Mr. Gillard to the bungalow, which he asked if he could stay over night; it was too late to catch a train; it was nine, or nine-thirty. The last train was six fifty-five. My brother had no objection. I had no objection if he stayed a week. Then in about an hour he came back; he was furious. He says, "Where is Jacob Heinochowitz"? So my brother was in the kitchen.

The Court: Let me interrupt you a minute. When he first was there and you gave him this check and slip, he was sober then?

30 The Witness. Yes, sir. That was an hour after he got the check. "Where is Jacob Heinochowitz"? in a furious way. I could see there was trouble steaming somewheres. I says, "In the kitchen." And I went ahead of him. I said, "Richardson is coming. He looks angry." He said, "I won't take this check," and he throws it on the table, on the kitchen table, with the slip together, folded up both in one. He said, "I want justice, and

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Samuel Heinochowitz, cross.

if I don't get justice I am going to take justice in my hands," and he started to hammer and bang on the table. I seen the man wasn't himself. Mr. Tyler came running in. He heard the noise. The electrician was standing there. Of course, he was prepared for it. He came with him; he seen he wasn't right. So I said to Mr. Richardson, "Why don't you calm yourself." I said, "Go sleep it over, and then when you get up in the morning talk the thing over." He said, "No, I want justice; I am going to take justice in my own hands, and I am going to do this and do that." I said, "Well, the man isn't responsible when he is in that state," and I tried to calm him and control him. Mr. Tyler, Mr. Gillard and myself for fully an hour talked and talked our heads off until we finally got him out of the house, and took him down to the bungalow, and slept over; and what became of him after that I never heard.

Cross examination by Mr. Campbell.

Q You drew the slip of paper, the statement that was handed to Mr. Richardson? A No; I drew the check. Mr. Tyler drew the slip.

Q All you did was to draw the check? A Yes, sir.

Q This check, I notice, was signed by your brother; is that right? A Yes, sir.

Q Then the bills up there were paid by your brother? A No. I didn't have any check account. I asked him would he finance me until I got home.

Q And then on the fifteenth your brother Jake had to finance you, too, when you paid him the first seventy-five dollars? A Yes.

Samuel Heinochowitz, cross.

Q Your brother financed you right through?

A All the time.

Q You devoted all your time to the hotel? A From the 29th of May the business took all my time.

10 Q What became of the management of this apartment house? Last week you testified you devoted all your time down there. A No. I testified I would go up occasionally whenever necessary. The apartment house does not require all my time.

Q Last week when you testified you had to spend all your time at the apartment and went up week-ends, that isn't true? A I didn't testify that.

20 The Court: What was the name of this hotel?

The Witness: Grand View Park Hotel.

The Court: Did he have letter heads printed?

The Witness: Yes.

The Court: Whose name appeared on them?

30 The Witness: Just Grand View Park Hotel, my name, proprietor.

Q Your brother was the owner of that hotel, the building and the ground? A Yes.

Q Did your other brother work up there, too? A He did.

Q He is not there now? A Yes.

Q Do you know where he is? A I do.

40 Q Is he in court today? A No, sir; it wasn't necessary for him.

Samuel Heinochowitz, cross.

Q Now, as a matter of fact; you didn't come up to the hotel until May 30th, did you? A Why, I was up at the time Mr. Richardson came up and Mr. Thompson was surprised to see a colored man.

Q Who was surprised? A Mr. Thompson was surprised to see a colored man; he didn't expect that. To be truthful about it, Mr. Thompson didn't know it was Mr. Richardson. He came ten minutes before Richardson came up. 10

Q After Richardson had given you this alleged notice that he was going to leave, you testified your brother spoke up; he said, "Stay until the first and give us a chance to get somebody." A He said, "Why don't you stay until the first and then we can get somebody."

Q When did you first employ Mr. Tyler as manager? A Why, I was negotiating with him for quite awhile. 20

Q I didn't ask you that. I asked you when you employed him as manager? A I can't recollect.

Q Did you have a signed contract with Mr. Tyler, signed by you? A No. He had some dealings with my brother; I don't know. After I got through with him I handed him over to my brother. 30

Q When did you first open a bank account on which you drew checks to pay the bills for the hotel last season? A When I first opened a bank account?

Q Yes, on which you used to pay the bills for the hotel last season. A The same bank account as usual.

Q And all the bills that were paid by check were paid on your own personal account? A Personal, my brother's. 40

Bristow Tyler, direct.

Q Your brother's account? A Yes, and then I gave a check for it.

10

BRISTOW TYLER, sworn for the defendant's behalf.

Direct examination by Mr. Unger.

Q You were connected with this hotel, Mr. Tyler? A Yes, sir.

Q Do you know from what date? A I can't remember the exact date, but I should think it was about the middle of June.

Q Were you doing anything on the outside before you were actually up there? A You mean working for this young fellow?

Q Yes. A Well, yes. I saw Mr. Sam Heinochowitz, and he arranged that I would do what I could to get business and so on for the hotel.

Q After the fifteenth of June you were the manager there?

By the Court.

Q (Interrupting.) Have you a contract? A Yes.

Q Have you got it here? A I haven't, sir.

Q Whom was it made with? A Jacob Heinochowitz.

Mr. Unger: What time?

Q About the middle of June? A The contract was signed after.

Q When was the contract signed? A A considerable time after.

40

Bristow Tyler, direct.

Q Well, July? A It was in July. I had been down there in the hotel about two weeks.

By Mr. Unger.

Q Were you there when Mr. Richardson was paid his half-month's salary? A No.

10

Q Were you there after the fifteenth of June? A Yes.

Q Do you recall when he left the place? A About two or three days before the end of June.

Q And did you report his leaving to anyone? A No; I wasn't there at that time when he left.

Q Well, were you asked to do anything after he had left, to engage anybody else? A I was.

Q And can you fix the time? A Well, I would say it would be the twenty-eighth or twenty-ninth of June. 20

Q And did you engage someone? A I engaged a crew.

Q To go up there? A Yes.

Q And do you know when they came? A The 28th or 29th; I am not sure.

Q Were you there? A I came up that day.

Q Was Richardson there? A Not at that time. 30

Q Did he come in later? A I don't know whether it was the first day or the second day after we were there.

Q Had he been away? A He had been away, I was told.

Mr. Campbell: I object—not what he was told.

The Witness: He had been away two or three days. 40

Bristow Tyler, direct.

Q He wasn't there when you first arrived there? A No, he wasn't.

Q And then he came in subsequently? A Yes.

Q Was anything said in your presence and in his presence about paying him? A Yes.

10 Q What was said? A Mr. Heinochowitz asked me to make up his pay.

The Court: Which Heinochowitz—the defendant here?

The Witness: No; I think it was Sam. I am not certain about it. I was asked to make up his time; and I was given the price, of course. I knew nothing about the man. I was given the price with the deductions I had to make.

20 Q Did you make them up on the yellow slip?

A I made them up on the yellow slip.

Q Is that the paper (showing witness Exhibit D. 1.)? A Yes. Your Honor, that is the slip I made up. Those are the deductions that I was given.

The Court: At the time it was made up did it have this writing on the reverse side?

30 The Witness: No, I don't believe so.

Q It wasn't on? A I don't believe so.

40 Q Did you present the check and the slip to anyone? A I took the check and the slip to Richardson and he asked me what this was; "what is this for?" I told him that I had made this up according to Mr. Heinochowitz's instructions; as to the deductions that were to be made, of course, I didn't know anything about those deductions. He said to me, "Well, this isn't right." So I said,

Bristow Tyler, direct.

“Well, what is wrong about it?” “Well,” he said, “What is this, the suits?” I said, “I don’t know anything about it. You will have to see Mr. Heinochowitz”; and this fellow said several other different things that were mentioned in the conversation at the time; but I can’t recall word for word. But the main point is that he objected to the deduction of nine dollars for the two suits. 10

Q Then did he take the check and the slip?

A Well, now, I can’t remember exactly whether he took it or whether he went without it. I showed him the check. I got the check from Samuel Heinochowitz. After I made up the figures I got the check from Samuel Heinochowitz, and I took the two together, and I had the conversation with him.

By the Court. 20

Q What happened to the yellow slip, his time slip? A I really don’t remember what happened to that slip and the check. I made up that slip.

Q Would there have been any reason why you would have given him this yellow slip for him to take away? Wouldn’t you want to keep it for your own record? A No. I believe that would be in the stub of the check-book. 30

Q That is your assumption. A That is my assumption. But I made that up so that he could see what it was.

By Mr. Unger.

Q Did he have it in his possession? A He saw it. It was laid down on the table.

Q And he went away? A And he went away. 40

Bristow Tyler, direct.

Q Did you see him afterwards? A I saw him afterwards, later on, when he came back.

The Court: How long afterwards?

The Witness: A couple of hours.

10 Q What happened then? A Why, he came in very cross and very furious, and he wanted to see Mr. Heinochowitz, and it was plain to see the man was in a very bad temper.

Q Do you know if he had been drinking? A I assume that he had.

Q Why? A Why, I smelled his breath of liquor.

Q What did he do? A Why, he said he was going to have justice, and he threatened all sorts of things; and I said to him: "Well, now, don't be ridiculous. Don't take this thing in your own hands like that. Just be calm. If you want to have justice coming to you, you will get justice." And we tried to pacify him. But he got more mad than ever, and he looked as though ready to do all sorts of things, and I was afraid myself something was going to happen; and between Sam Heinochowitz and myself and the electrician that brought him up, we thought we would pacify the man by putting him outside. We got him outside, and that is the last we saw him. We got him outside of the house, and the electrician took him in hand, pacified him and took him away.

30 Q Did he have anything to do with a knife? A There were knives.

The Court: Did he have anything to do with them?

The Witness: No; only he made sort of a grab as if he was going to get it. He made a

40

Bristow Tyler, cross.

motion to the implements that were on the table; amongst them were knives.

Q The next day did you see him? A I didn't see him.

Q You remained there? A I remained there, yes.

10

Cross examination by Mr. Campbell.

Q Do I understand you to say that in July you had a contract which was executed with Jacob Heinochowitz? A I believe it was signed sometime in July; it was signed sometime after; I was there quite a little while.

Q By Jacob Heinochowitz? A Yes.

The Court: Are you still in Mr. Heinochowitz's employ? 20

The Witness: No.

The Court: Have you a contract with Mr. Heinochowitz for next summer?

The Witness: No, sir.

Q When did your term of employment with Mr. Heinochowitz first begin? A Well, that I am not sure about. I think it was the middle of June. 30

Q And the first part of your employment was spent in canvassing various prospective guests for the hotel? A I did canvass, and tried to get business from my different friends; and I had to get help.

Q Oh, you were sent to get help, too? A Yes.

Q You spent time in canvassing for prospective guests and look up help, and didn't get out 40

Bristow Tyler, cross.

to the hotel until the sixth, seventh or eighth of June; that is right, isn't it? A That is about right, yes.

Q But you never saw Mr. Richardson around the hotel until his return on the 28th or 29th; that is the first time? A No, that is not the first time.

10 Q What is the first time? A I went down to see the hotel with Mr. Heinochowitz. I went down there before I was engaged.

Q It was sometime before the middle of June? A I went down there days before I was really engaged; and I stayed there one night, and I saw Richardson. Of course, I wasn't engaged; I was simply down there, and I saw Richardson down there.

20 Q When you went down there to be engaged, with whom did you talk—Jake Heinochowitz? A First of all my first interview was with Sam Heinochowitz, and two or three interviews in Newark was with Sam Heinochowitz. I went down with Mr. Heinochowitz.

Q And when you arrived at the hotel did you meet Jacob Heinochowitz, too? A Jake was there.

30 Q Did you talk to him about managing the hotel? A Yes.

Q Mr. Richardson was there then? A On those occasions when I went down previous to being engaged, yes.

Q And then after you had been engaged, the first time you returned to the hotel was sometime the latter part of June 28th or 29th? A Yes.

Q And Mr. Richardson wasn't there then? A No.

40

Bristow Tyler, cross.

Q He returned a day or two after? A Yes. Of course, I knew Richardson on those occasions.

Q So you don't know the date Richardson left Hackettstown, do you? A No.

Q You are not certain whether it was Sam Heinochowitz or Jacob Heinochowitz who asked you to make up the time, are you? A Sam. 10

Q Are you certain about that? A He saw the man coming in, and he knew he wanted his time, I suppose, and he asked me to make it up.

Q And you don't know whether Mr. Richardson's name was on that slip or not when you prepared the data? A No, I don't think this was a blank slip when I made it out. Of course, I know that is Richardson's time.

By the Court.

20

Q You were told that? A Yes; I made that out myself.

Q Why was it necessary for you to make up the time? Why couldn't Mr. Heinochowitz make up the time? You had to get the time from Sam Heinochowitz anyway. A I did; I was keeping the books for him.

Q These items were not in the books? A No. There wasn't a proper set of books kept. 30

By Mr. Campbell.

Q And after you had tendered this check and slip to Mr. Richardson he merely stated that it was not right? A He did.

Q And as far as you know, he never took the check and the slip? A I don't know what became of it. I know it was in my hands when I showed it to him. 40

Bristow Tyler, cross.

Q When Mr. Richardson returned he wasn't swaying or staggering? A No.

Q The only thing you know, you smelled something on his breath? A Yes.

Q It might have been a glass or two glasses; you don't know? A Well, that is a matter I can't
10 say.

By Mr. Unger.

Q Did Mr. Richardson tell you at any time that his wife had purchased a restaurant? A Yes, I think he did.

Q What did he say?

The Court: When?

The Witness: The time when I was down
20 there.

The Court: Well, the time when you were down there, fix that.

The Witness: He mentioned something about his wife having a restaurant.

The Court: When?

Q Before the end of June? A Before the end of June.

30 Q What did he say? A He said something about his wife. I wasn't interested. He told me something about his wife having a restaurant, and he got some money—five thousand dollars, I think he said.

By Mr. Campbell.

Q Was that when you were at the hotel as guest? A Yes, that was when I was there as a
40 guest.

Hudson Gillard, direct.

The Court: That was before the 15th of June?

The Witness: No, not before the 15th; after the 15th. It was about the first time I went down there; it would be about the 15th.

(At this point a recess was taken to two o'clock in the afternoon.) 10

AFTER RECESS.

HUDSON GILLARD, sworn in defendant's behalf.

Direct examination by Mr. Unger.

Q You live in Newark? A East Orange. 20

Q And did you have anything to do up at this farm? A Why, yes. I installed all the electric work on the Heinochowitz farm.

Q When did you start to work there? A April 18th.

Q And when did you finish? A August 6th.

Q So that you were there during all the time that Richardson was there? A Except Saturdays and Sundays I wasn't there. 30

Q And then you went away? A I was away from Saturday noon till Sunday night.

Q Do you remember the time when Richardson came? A Yes, I do.

Q Can you fix the date? A I couldn't say the exact date, but it was just before—I think it was just before Decoration Day.

Q Were you there on the occasion when he received his June pay the middle of June? A Why, 40

Hudson Gillard, direct.

I didn't see him receive his pay, no; but I was at the place at that time.

Q And did you hear any conversation taking place at that time? A Not exactly at that time.

Q Was anything said at that time or at any time after that about any other engagement which
10 Richardson had? A Well, the only thing when Mr. Richardson went away they were planning on getting a restaurant in New York City.

By the Court.

Q When was that when you say he went away?
A Why, he went away during the week.

Q Well, now, when was it? There was testimony here that he was away several times. A He
20 was away several times.

Q Well, which of those times was it? A I couldn't say exactly which one of those times it was; but I know it was one time.

By Mr. Unger.

Q What did he say on that occasion, or what was said to him in his presence and while you were there? A That he was buying a restaurant
30 in New York and that he would have to go to New York and take care of the business.

Q Did you hear anybody say anything to him, asking him to do anything? A Well, I think—I am not positive whether it was Samuel Heino-
chowitz or Jake—but I think one of them asked him to stay one night—stay till the first of the month.

Q And what did he say to that? A I don't
40 recollect him saying anything to that.

Hudson Gillard, direct.

Q You have heard that asked of him, though, by one or the other of the Heinochowitzes? A Yes.

Q You say he went away several times? A I should say three or four times; I am not positive.

Q And do you know how long he stayed on those occasions? A I couldn't give the definite time. He went away for a couple of days. 10

Q And did he ever tell you what occasioned the going away? A No, he never personally told me what occasioned his going away.

Q Did he tell you why he had to go? A Just the night when I heard him telling about the restaurant.

Q Were you there when he came back towards the end of the month and when some kind of trouble ensued? A I was there when he came back. 20

Q Tell us just what you saw or witnessed? A Well, I seen Mr. Richardson came back, and the next time I seen him was down at my bungalow. He came down to my bungalow.

Q Did he say anything to you at that time? A Well, he didn't say anything. He told me that there was another chef here; that he was paid off; that he didn't take his check on account of money being deducted for white suits which Mr. Heinochowitz's brother had given to him. 30

Q And did you hear any conversation that took place between the parties with reference to those white suits? A I did, later on in the evening.

Q And what happened? A Mr. Richardson went back to talk to Mr. Heinochowitz, and he just told him that he wanted justice; that he didn't want to pay for the white suits; that the suits were given to him by his brother, and his brother 40

Hudson Gillard, direct.

was called in, Harry Heinochowitz, and he denied giving Mr. Richardson his suits; that Mr. Thompson gave him the suits.

The Court: He said Mr. Thompson gave them to him?

10 The Witness: If I am not mistaken, I think his brother, and Mr. Richardson said so, too; I am not positive of that; but I think it was said Mr. Thompson gave him the suits.

Q Who said that? A I am not positive whether it was Mr. Richardson or Mr. Harry Heinochowitz; but I know Mr. Hary Heinochowitz said he didn't give out the suits; he denied giving them out.

20 Q After that did Richardson change his story as to who did give him the suits? A Not that I know of.

Q Did he make any statement as to who gave them to him? A I didn't hear any.

Q What happened in the bungalow? A Why, we sat down there, talking, and Mr. Richardson had his bag there, to leave. He showed me a bond he had in his pocket, and we had a couple of drinks together.

30 Q What were you drinking? A Gin.

Q Was he drinking gin? A I had a few drinks; he had a few more.

Q And then did Richardson go back to the hotel after he had the drinks? A Richardson went back to the hotel; I went back, too.

40 Q Was there any disturbance after that? A Mr. Richardson hammered on the table and told Mr. Heinochowitz he wanted justice; he wouldn't pay for the suits; he had no business taking it off his check; they were given to him.

Hudson Gillard, cross.

Q Was there an argument there at that time?

A Well, of course, you can call it an argument if you want to.

Q Was he making any noise? A He was talking above his voice. He said he wanted justice, and he hammered on the table.

Q Did he have anything to do with a knife? A 10
Well, as to that I couldn't say. I know he reached over and hammered on the table; but I couldn't say whether he had anything to do with a knife.

Q Did any of you folks take him away from there? A I spoke to Mr. Richardson and told him not to get excited and calm down. Mr. Tyler and myself told him to go ahead out, and he went to the back porch and I went out to the bungalow with Mr. Richardson, and we went to bed.

Q The next day what happened? A The next 20
day I seen Mr. Richardson when he was going to the station. I said good-bye to him; that is all there was to it.

Q Was he using bad language there that night?

A Well, as far as bad language, I can't really recollect if he did use bad language; but he was hollering above his voice, above his talk. He said he wanted justice. He was very much excited.

30

Cross examination by Mr. Campbell.

Q Did Mr. Heinochowitz ask you to take Mr. Richardson to the train on or about the 27th of June, the time that Mr. Richardson went back to New York? A I took Mr. Richardson to the train one night.

Q Was that the latter part of June, 1923? A I think it was around that time. It was one evening I took him with my car.

40

Hudson Gillard, cross.

The Court: Who asked you to take him?

The Witness: That I couldn't say whether Mr. Heinochowitz asked me or not. I know I took Mr. Richardson in my car to the train.

10 Q And do you remember coming up to the barn and finding Mr. Richardson and telling him you were going to take him to the train? A I came up to the bungalow—I know I went to the hotel and called Mr. Richardson, if I am not mistaken.

Q You wouldn't have done that unless somebody asked you?

Mr. Unger: I object.

The Court: I will allow it.

20 Mr. Unger: If he knows.

A Well, someone must have asked me. I don't know who did ask me. I couldn't say whether Mr. Richardson or Mr. Heinochowitz asked me.

30 Q But you went up to find Mr. Richardson for the purpose of taking him there to the train, so that Mr. Richardson couldn't have asked you. A I did. He was waiting to go to the train. I couldn't say whether he had asked me at supper at the hotel, at supper time, or that Mr. Heinochowitz asked me.

Q While you were up at this estate you lived in a bungalow? A I did.

Q And where were you working the latter part of June, 1923, on that estate—in the hotel or over in some of the bungalows? A What date was that?

40 Q The latter part of June, 1923. A The latter part of June I was working on the bell line along the main road.

Hudson Gillard, cross.

Q What were your hours of working there? A My hours were from eight in the morning to half-past four in the afternoon.

Q And as far as you know Mr. Richardson might have been around the hotel a day or so after he returned before you saw him, if your business kept you out? A I came to the hotel for meals. 10

Q Did Mr. Richardson serve the meals as a waiter? A No; but I generally went into the kitchen to wash.

Q You don't know if it was so on these particular days? A I know I always did, because there wasn't any water in the bungalow.

Q Do you recall when Mr. Richardson returned after you had taken him to the train the last time? A I couldn't say whether it was the next night or the night after. It must have been the next night or two nights after; but it was in the evening when he returned. 20

Q You were drinking with Richardson during the evening. Were you drinking about the same amount yourself? A About the same.

Q Was Mr. Richardson intoxicated? A Well, I couldn't say; I wouldn't say he was really intoxicated.

Q And were you intoxicated at the time? A I wouldn't consider myself, no. 30

Q And he had been drinking the same as you had? A I presume so, unless he had some more before that.

Q When Mr. Richardson came back to demand his wages, did you follow into the same room? A Yes.

Q In what room did this take place? A The kitchen of the hotel.

Q You were in a position to see what took place? A I was right alongside Mr. Richardson. 40

Hudson Gillard, cross.

Q And if Mr. Richardson had grabbed a knife and went after Mr. Heinochowitz, you would have seen that, wouldn't you? A I didn't notice.

Q Answer the question. A No.

Q You would have been able to see it if he had done it, standing alongside of him? A I guess I would have.

Q You didn't see him? A I didn't see him take any knife.

Q Mr. Richardson also told you that they offered him a check and he didn't take it; that is what you testified to? A He said he offered him the check. In the bungalow he told me he was given a check, but it was deducted for two white suits.

Q And he wouldn't take it? A That is what he told me. He didn't show me any check.

Q And you didn't see any in his possession? A All I seen was a five-thousand-dollar bond.

Q Did you have much trouble getting Mr. Richardson to leave the hotel after he had asked Mr. Heinochowitz for his money? A Well, I spoke to him quite a few times before he came out with me.

Q You didn't have to pick him up and carry him? A I would have a hard job carrying him.

Q Answer the question. A No.

Q You did talk with him and reason with him? A Yes.

Q And you told him he should claim it another way? A Yes.

Q While you were there as an electrician did you see Mr. Thompson, too? A I did.

Q How many times did you see him between the latter part of May and the 7th of June—more than once? A Yes.

Q Several times? A Several times.

Hudson Gillard, cross.

Q Was he accustomed to stay there during the days from the latter part of May to the 7th of June? A Some days—well, no; he didn't stay there, make a home out of it; he would come in the morning and go back at night.

Q But he was there during the days? A Some days.

10

By Mr. Unger.

Q Did you report to Mr. Heinochowitz that Richardson had taken his stuff and left? A Why, Mr. Heinochowitz was away one day, and he came back and he asked where Mr. Richardson was, and I told Mr. Heinochowitz that he went away.

The Court: Which—Jacob Heinochowitz?

The Witness: Jacob Heinochowitz.

20

Q Did you tell him he had taken his stuff? A And Mr. Jacob Heinochowitz asked me did he take his things. I said, "He took a bag with him."

By Mr. Campbell.

Q Was that a day after the alleged affair in the kitchen? A Oh, no; that was before this affair in the kitchen, before; but he came back that day.

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Q How long before? A Well, I couldn't say; maybe two days, maybe three days, when he went away at that time.

Q Mr. Richardson didn't share the bungalow with you, did he? A Oh, no.

Q Did you enter his room and see whether or not anything was missing? A No.

Q How do you know whether he had taken his goods or not? A I didn't say he took his goods; I said he took his bag.

40

George L. Thompson, further cross.

GEORGE L. THOMPSON, recalled.

Further cross examination by Mr. Unger.

10 Q Mr. Thompson, did you have a typewriter up at the farm? A I don't think I did. There was a typewriter around the place, but it wasn't mine.

Q Did you do typewriting? A No; I am not a typewriter. I can run it enough to write a letter.

Q These typewritten letters that are in evidence were dictated by you to your wife? A Yes.

Q Transcribed by her? A Yes.

20 Q This contract which you wrote out on the form there was written out by you in long hand? A No; this contract—yes, that is written by me.

The Court: That is the one you refer to now as Richardson's contract?

The Witness: Richardson's contract.

30 Q Why didn't you draw it on the stationery of the hotel? A We didn't have it printed then. There was no stationery at that time ready. We had been to the printer the day before to see about the stationery and the pamphlets, and there was none printed.

Q Where did the paper come from upon which you wrote the contract? A Out of the drawer, the top drawer, on a pad. The pad belonged to me. I kept all my stationery and everything in the top drawer of the buffet in the dining-room. I used it as a desk, like.

40 Q Was it torn from a pad? A I think I did tear it from a pad.

George L. Thompson, further cross.

Q Well, you said it came from a pad. A I had a number of different sized pads that were there.

Q Did this come from a pad? A I am almost sure it did.

Q Did you have any paper that was not padded? A I had some writing paper there and my own private stationery. 10

Q When your wife typewrote these letters, that was done at your home? A Always.

Q She was employed in some office? A I had a brief case that I carried back and forth with me.

Q I didn't ask you anything about your brief case. Was she employed in an office? A She did work at different banks.

Q And this stationery upon which she wrote these letters that are in typewriting, where did that come from? A I bought it. 20

Q Bought it? A Yes, sir.

Q Did you use the same kind of stationery? A Sometimes if she wrote you a letter, sometimes you will see she used my former business head letter, or paper that has got my name printed on it.

Q Did you use the same kind of stationery up at the farm that you had in your home? A Sometimes, if it was in my brief case. I carried my stationery and my bills back and forth with me, and I used this old buffet as sort of a writing desk. 30

Q Let me show you this contract again, marked P. 1. Can you tell by looking at that whether it was torn from a pad? A I can't tell.

Q The paper is the same, is it not, upon which P. 3 is written? A Well, I am no expert on paper. 40

George L. Thompson, further cross.

Q Look at it. A I can't tell if it is the same.

Q Same size? A It measures up the same. I should think if it were from a pad there would be some sort of a rough edge on it. I use pads a great deal.

10 Q Same texture, isn't it? A I don't know. I am not an expert on paper. It was all my stationery mostly that was being used up there. There was no stationery at the hotel up to the time I left.

Q Did you ever see any stationery up at the hotel like this (showing witness), the name "Grand View Park Hotel" incorporated on it?

A No, I never saw it. This is the first time I have ever seen it, and that is not the original letter paper we decided to select. We selected it without these houses on. We went several times
20 to the printer, and it was selected without the photographs on.

Q You never saw this stationery? A No.

Q This letter which you say you wrote to Mr. Reilly and which is in evidence there, you got that back from Mr. Reilly, did you? A No, I did not. This man did (indicating).

Q Reilly isn't here, is he? A No, Mr. Reilly isn't here.

30 Q You didn't get the envelope back upon which it was directed? A That I don't know. You will have to ask Mr. Richardson. As a rule you never save envelopes.

Samuel Heinochowitz, direct.

SAMUEL HEINOCHOWITZ, recalled.

Direct examination by Mr. Unger.

Q Mr. Heinochowitz, I notice Richardson's address is on the back of this slip. When was that put on? A Oh, about a week or so after.

Q You wrote that on? A Yes.

10

Q Was that address written on there at the time this was presented to Richardson? A No, sir.

The Court: Why did you write Richardson's address on here a week after you discharged him?

The Witness: Why, I wanted to have his address written because I kind of surmised he brought back the check of \$26.90, and I thought it would be best to have the man's address; at some time some trouble might arise, so I would have his address.

20

The Court: What did you do—take this address from your memory?

The Witness: No. I found another piece of paper up in the house, and I took it back to Newark.

The Court: Why did you want to write it down there?

30

The Witness: It is in the books.

By Mr. Campbell.

Q You expected trouble? A No, sir; I wanted to play safe.

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Howard Richardson, direct.

HOWARD RICHARDSON, recalled.

Direct examination by Mr. Campbell

10 Q Mr. Richardson, did you on the night of June 28th or 29th see this check and this slip, D. 2 and D. 3? A I seen this check, and this was left with them with my check.

The Court: Haven't you been all over that?

Mr. Campbell: I merely want to ask him if they ever came into his possession.

The Court: We have been all over that. He has denied he ever had that yellow slip; he denied that he took the check.

20 Q Will you tell the Court how you obtained these white suits; who gave them to you? A Mr. Jacob Heinochowitz was present when his brother Harry said, "Jake, I am going to give Howard that white suit." He said, "Yes."

The Court: We have been all through that.

30 Q Were you intoxicated on the night that you recall? A I never get intoxicated.

Q Before you returned to Mr. Heinochowitz on that night on which they allege you grabbed a knife, had you been discharged and instructed to leave by Mr. Jacob Heinochowitz? A I did.

PLAINTIFF AND DEFENDANT REST.

(Counsel sum up their cases.)

Finding of Facts and Verdict.

The Court: I am perfectly satisfied that the contract P. 1 was entered into by Mr. Thompson as the authorized agent of Mr. Heinochowitz. I don't have to decide in order to find this to be a fact that Mr. Thompson was employed in any particular capacity by Mr. Heinochowitz in this Grand View Hotel proposition. The evidence clearly shows that Mr. Thompson was up there on numerous occasions when he was doing certain work for Mr. Heinochowitz; whether he was doing it as a volunteer or whether he was doing it at Mr. Heinochowitz's request, it does not clearly appear in this particular action; but that he was there, and at Mr. Heinochowitz's request he drew up this contract. It seems to me that it makes very little difference whether Mr. Heinochowitz put these two ditto marks before or after Thompson signed the agreement, or whether he didn't put them there at all. I find that Mr. Thompson was acting as the authorized agent for Mr. Heinochowitz in the making of this agreement.

I further find as a fact that when Richardson on these two or three occasions left the hotel of Heinochowitz and went down to New York it was with the consent of Mr. Heinochowitz, and that he did not by so going away breach his contract. The attitude of the witnesses of the defendant, with the exception of Mr. Gillard, the last witness, was one which does not tend to impress the Court with the entire honesty of the testimony given. I am not at all impressed with Mr. Heinochowitz's testimony that he did not run this hotel or own it or was the man responsible for it. There was altogether too much evidence in this case that he was the employing party—that is, Jacob Heinochowitz and not Samuel Heinochowitz, the other party who was referred to here so frequently as

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Finding of Facts and Verdict.

having been the person who is being financed by Jacob.

I hold that in both cases the plaintiff is entitled to a verdict. In the first case the judgment will be for \$68.30 with interest from June 30th. It is computed by taking \$75 and deducting \$4 which
 10 was advanced in some form or other by Mr. Heinochowitz to Mr. Richardson, and \$2.70 for railroad fare. I make that interest \$2.50. That would be \$70.80 on that claim. And the other one—that is the first suit—

Mr. Campbell: There is a second count to that suit.

The Court: —\$100. This is up to the 15th of July. So that will make \$172.80 on the first suit.

On the second suit it is for \$100 in July and
 20 \$200 in August and \$100 in September; is that it?

Mr. Unger: That wouldn't make it. The first is up to the 15th of July.

The Court: So on the second suit it will be a judgment for \$400.

Mr. Unger: In order to keep the record clear, I ask your Honor to find as a fact that the plaintiff voluntarily abandoned his employment at the end of June.

30 The Court: I decline to so find for two reasons—first, because the request is made after the judgment has been rendered, and, secondly, because I wouldn't find it as a fact anyhow, because I don't think it is so.

Mr. Unger: I don't think the express finding is necessary; but your Honor will give me an exception to your finding of fact and to your holding in law.

The Court: You will be granted an exception.
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Certificate of Judge.

DISTRICT COURT FOR THE SECOND
JUDICIAL DISTRICT OF ESSEX COUNTY.

HOWARD RICHARDSON,

Plaintiff,

against

JACOB HEINOWITZ,

Defendant.

10

I, Charles H. Stewart, Judge of the District Court for the Second Judicial District of Essex County, Irvington, do hereby certify that the defendant in the aforesaid action applied to me for the appointment of a stenographer to transcribe the proceedings at the trial of the aforesaid cause and take down the testimony therein.

20

I certify that Herman Winarsky was designated as stenographer to act as aforesaid in the said case, and was duly sworn. I do further certify that this transcript of the said proceedings and said testimony made by the said stenographer is a correct state of the case upon appeal in the aforesaid action.

CHARLES H. STEWART.

Judge.

30

Dated April 5, 1924.

40

Exhibit P. 1.

EXHIBIT P. 1.

May 29th, 23

Grand View Park Hotel,
Morris Co., N. J.

10 This is to certify that I, George L. Thompson,
manager of the above hotel, do hereby employ
Howard Richardson as chef of the above hotel
from May 29th, 1923, to June 30th, 1923, at the
rate of \$150 a month, and from July 1st, 1923,
the said Howard Richardson is to receive \$200
per month as chef to September 15th inclusive, at
which date, at midnight, the term of the contract
expires. The said Richardson, however, agrees
to remain as chief chef up to September 15th, 1923,
one day per week off duty with pay.

20

Signed

“ Jacob Heinochowitz, owner,
By George L. Thompson,
Manager
Howard Richardson

30

40

*Exhibit P. 2.***EXHIBIT P. 2.**

Phone Bryant 6588-2871 Thos. F. Reilly, Prop.

BRYANT EMPLOYMENT AGENCY,

811 Sixth Avenue

Bet. 45th & 46th Sts. New York.

10

Date 5/29/23

Employer Grand View Park Hotel,

Address Hackettstown, N. J.,

Ordered by Mr. Thompson,

Employee H. Richardson,

To be employed as Chef Rate of Wages \$150.00

Cost of transportation, if outside of city

Employers) If Engaged G. Thompson, Mgr.

Please sign) If Not Engaged

20

If Under Consideration Sign Here

IF APPLICANT IS ENGAGED PLEASE
SIGN THIS CARD AND RETURN AT ONCE
BY MAIL. IF NOT ENGAGED SIGN AND
RETURN BY BEARER

30

40

Exhibit P. 3.

EXHIBIT P. 3.

May 31, 1923.

Mr. Thos. F. Reilly,
Bryant Employment Agency,
811 Sixth Ave.,
New York, N. Y.

10

My dear Mr. Reilly,

I wish to thank you for sending me the chef, Howard Richardson, so promptly. He arrived Tuesday, May 29th, in the middle of the afternoon and we put him to a very severe test as we had a large party, about fifty or more, to prepare dinner for and we were considerably handicapped for provisions as this party came upon us unaware.

20

However Mr. Richardson proved himself master of the situation by getting to work at once and prepared an exceptionally fine dinner, about ten courses, and made a big hit with Jacob Heinochowitz, the proprietor of the hotel

We intend to keep him for the season and have given him a contract to that effect. He receives \$150.00 per month up to June 30th and from July 1st till Sept. 15th is to receive \$200.00 per month.

30

I have mailed your employment card.

We furnish him with white linen suits free of charge.

Again thanking you for your kind assistance, I am,

Yours very truly,

GEO. L. THOMPSON

Exhibit P. 4.

EXHIBIT P. 4.

May 15, 1923.

Mr. Jacob Heinochowitz,
Hackettstown,
New Jersey,

Dear Jack,

Have gone to every employment agency that specializes in Chefs and kitchen help, and I found it is impossible to get a chef for the hotel under \$25.00 a week.

However, I will keep on going around and see what I can do.

Yours very truly,

10

20

30

40

*Exhibit D. 1.***EXHIBIT D. 1.**

This check is in full payment
of the following if incorrect
please return, endorsement is
full acknowledgment.

10 NO RECEIPT NECESSARY

Date	Invoice	Amount
Check		\$70.00
By cash		5.00
	Total	\$75.00
	Total	
	Discount	
	Net Amount	

20

No. 1203

JACOB HEINOWITZ
135 Johnson Avenue

Newark, N. J. June 16th, 1923

Pay to the order of

Samuel J. Heinowitz

\$70 00/xx

30 Seventy and no/xx

Dollars,

WEEQUAHIC TRUST COMPANY,
55-530

Newark, N. J.

Jacob Heinowitz

40

*Exhibit D. 2.***EXHIBIT D. 2.**

May 30	2	
June 29	29	
	—	
	31 days	
Less absent	7	
	—	10
	24 days @ 150.00	117.60
By check	70.00	
Cash	5.00	
2 suits	9.00	
Paul	2.70	
Harry	4.00	90.70
	—	—
	Balance	\$26.90

20

30

40

*Exhibit D. 3.***EXHIBIT D. 3.**

This check is in full payment
of the following if incorrect
please return, endorsement is
full acknowledgment.

10 NO RECEIPT NECESSARY

Date	Invoice	Amount
------	---------	--------

This pays up in full for all
services done by me at the

Grand View

Park Hotel

Total

Discount

20 Net Amount

No. 1249

JACOB HEINOWITZ

135 Johnson Avenue

Newark, N. J. June 29 1923

Pay to the order of

Howard Richardson

\$26.90/xx

30 Twenty Six and 90/xx

Dollars

WEEQUAHIC TRUST COMPANY

55-530

Newark, N. J.

Jacob Heinochowitz

Decision of Supreme Court.

DECISION SUPREME COURT.

Filed Oct. 1, 1924.

NEW JERSEY SUPREME COURT.

MAY TERM, 1924.

10

HOWARD RICHARDSON,
Plaintiff-Appellee,

vs.

JACOB HEINOWITZ,
Defendant-Appellant.

*Two Cases of
Same Title.*

Submitted June 6, 1924. Decided October 1,
1924.

20

On appeals from the District Court of the
Second Judicial District of the County of Essex.

Before Justices Trenchard, Minturn and
Lloyd.

For the appellant, Milton M. Unger.

For the appellee, Dalrymple & Campbell, and
W. H. Campbell, Jr.

30

Per Curiam:

On November 21, 1923, judgment was rendered
against the defendant-appellant and in favor of
plaintiff-appellee in two actions, one to recover
wages earned and wages accruing under a con-
tract after the alleged wrongful discharge of
plaintiff-appellee by defendant-appellant, during
which period the plaintiff-appellee was unable to
secure other employment, and in the other case
for a later period. Judgment in the first action

40

Decision of Supreme Court.

was for \$172.80 and costs, and in the second action for \$400.00 and costs.

The two suits were tried together by the judge sitting without a jury, and have been argued here together.

10 At the trial the plaintiff relied upon a written contract, which read as follows:

“May 29th, ’23.

Grand View Park Hotel
Morris Co., N. J.

20 This is to certify that I, George L. Thompson, manager of the above hotel, do hereby employ Howard Richardson as chef of the above hotel from May 29th, 1923, to June 30th, 1923, at the rate of \$150. a month, and from July 1st, 1923, the said Howard Richardson is to receive \$200 per month as chef to September 15th inclusive, at which date, at midnight, the term of the contract expires. The said Richardson, however, agrees to remain as chief chef up to September 15th, 1923, one day per week off duty with pay.

Signed

“Jacob Heinochowitz, Owner

By George L. Thompson,

Manager.

30

Howard Richardson.”

40 The defendant denied that he executed the contract, or that he authorized its execution, or that he knew of its existence. The court below found that the contract was entered into by Mr. Thompson as the duly authorized agent of the defendant, and there was abundant evidence to support that finding, and the court below was fully justified in finding that the contract was binding upon the defendant.

Decision of Supreme Court.

In an endeavor to prove the terms and conditions under which the plaintiff was employed, the plaintiff offered in evidence a letter purporting to have been written by Mr. Thompson to Thomas F. Reilly, the manager of the employment agency through which the plaintiff had been employed. It was objected to as not binding upon the defendant, but it was admitted in evidence. This letter, the evidence shows, was written by Thompson. It shows not only the terms under which the plaintiff was hired, but also that the "employment card" was mailed to the agency, in accordance with the requirement of the agency in its letter introducing plaintiff to the defendant, of which requirement, of course, the defendant was aware. The letter in question was therefore evidential upon the question of compliance with that requirement. If the defendant desired to limit its evidential force to that purpose, he should have indicated that wish by a proper motion, and that he did not do. In this connection it is to be observed that it nowhere appears to what extent the trial judge made use of the letter in his determination of the case. The presumption is that he used it properly. We therefore conclude that there was no error in this matter.

The only remaining point is that the plaintiff abandoned his employment and was not discharged.

The Trial Judge found against the defendant upon this point and there was ample evidence to support his finding.

Both judgments will be affirmed, with costs.

Order Affirming Judgment.

ORDER AFFIRMING JUDGMENT DISTRICT COURT.

Filed October 17, 1924.

NEW JERSEY SUPREME COURT.

10	HOWARD RICHARDSON, <i>Plaintiff-Respondent,</i> <i>vs.</i> JACOB HEINOWITZ, <i>Defendant-Appellant.</i>	}	<i>On Contract.</i>
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On appeal from the District Court of the Second Judicial District of the County of Essex.

20 Order for affirmance of judgment of District Court.

This case having been duly submitted on briefs in the April term of this Court by Milton Unger of counsel for the defendant-appellant, and Dalrymple & Campbell, attorneys for and William H. Campbell, Jr. of counsel with the plaintiff-respondent, and the Court having considered the same and finding no error in the judgment of the District Court of the Second Judicial District of the County of Essex, it is thereupon

30 ORDERED and ADJUDGED that the judgment of the District Court of the Second Judicial District of the County of Essex, for the sum of \$400.00 and costs amounting to \$27.43 with interest from November 21, 1923, from which an appeal was taken in this cause be and the same hereby is affirmed.

On motion of
 40 DALRYMPLE & CAMPBELL,
 Attorneys for Plaintiff-Respondent.

Same Order entered affirming
Judgment of \$172.80 and \$16.07 costs.

Notice of Appeal.

NOTICE OF APPEAL.

Filed October 17, 1924.

NEW JERSEY SUPREME COURT.

HOWARD RICHARDSON, <i>Plaintiff-Appellee,</i> <i>vs.</i> JACOB HEINOWITZ, <i>Defendant-Appellant.</i>	}	<i>Notice of Appeal.</i> <i>(2 Cases.)</i>	10
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To Dalrymple & Campbell, Esqs.,
 Attorneys of Plaintiff-Appellee.

SIRS:

PLEASE TAKE NOTICE that the defendant- 20
 appellant Jacob Heinochowitz, hereby appeals
 from the whole of the verdict and judgment in
 the above cause, to the New Jersey Court of
 Errors and Appeals.

Yours respectfully,

MILTON M. UNGER,
 Attorney of Defendant-Appellant.

30

40

Grounds of Appeal.

GROUND OF APPEAL.

Filed December 9, 1924.

New Jersey Court of Errors and Appeals

10

HOWARD RICHARDSON,
Plaintiff-Appellee,
vs.
 JACOB HEINOWITZ,
Defendant-Appellant.

(2 Cases.)

*On Appeal
 From
 New Jersey
 Supreme
 Court.*

*Grounds of
 Appeal.*

20

JACOB HEINOWITZ, defendant-appellant, as
 and for the grounds of his appeal from the judgment rendered against him in the above cases, hereby specifies and assigns the following:

1. The Supreme Court erred in affirming the judgments of the District Court in both of the above suits.

MILTON M. UNGER,
 Attorney of Defendant-Appellant.

30

40

Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

New Jersey Court of Errors and Appeals

HOWARD RICHARDSON, <i>Plaintiff-Appellee,</i> <i>vs.</i> JACOB HEINOWITZ, <i>Defendant-Appellant.</i>	}	<i>On Appeal from Supreme Court.</i>
--	---	---

BRIEF OF DEFENDANT-APPELLANT.

By this appeal, defendant-appellant seeks to reverse the judgment of the New Jersey Supreme Court which affirmed two judgments rendered by the Second Judicial District Court of Essex County in favor of the plaintiff-appellee in two cases entitled as above.

Facts.

Howard Richardson, the plaintiff, brought two suits in the Second Judicial District Court of Essex County, alleging that he was employed on May 29, 1923, to work as a chef for the defendant, from May 29, 1923, to June 30, 1923, for \$150 per month; and for \$200 per month from July 1, 1923, to September 15, 1923; that he worked from May 29, 1923, to June 30, 1923, when he was discharged, having received \$75 on account, and that there was a balance of \$85 due him for that month; and that from the date of his discharge, June 30, 1923, to September 15, 1923, he failed to secure employment, and that he was entitled to \$400 additional for these two months.

The two suits were tried together, and he recovered a verdict for \$400 in one suit and \$172.80

in another; these amounts being practically the sum claimed by him in each suit.

At the trial, the plaintiff elected (Case, p. 49, l. 36) to rely on a written contract between the parties. This contract appears as Exhibit P. 1, on page 114 of the case, and is as follows:

EXHIBIT P. 1.

May 29th, 23

Grand View Park Hotel,
Morris Co., N. J.

This is to certify that I, George L. Thompson, manager of the above hotel, do hereby employ Howard Richardson as chef of the above hotel from May 29th, 1923, to June 30th, 1923, at the rate of \$150 a month, and from July 1st, 1923, the said Howard Richardson is to receive \$200 per month as chef to September 15th inclusive, at which date, at midnight, the term of the contract expires. The said Richardson, however, agrees to remain as chief chef up to September 15th, 1923, one day per week off duty with pay.

Signed

“ JACOB HEINOWITZ,

Owner,

By GEORGE L. THOMPSON,

Manager.

HOWARD RICHARDSON.

The defendant denied that he executed the contract, or that he authorized its execution, or that he knew of its existence. The plaintiff claimed that the defendant (who could read and write) dictated the agreement, and instead of signing his name, put two ditto marks under the word “signed” as an indication of his satisfaction with the agreement.

It appears from the evidence that the plaintiff went to work and quit on June 29, 1923, after he had become intoxicated, and raised a rumpus, and after it transpired that the plaintiff had himself informed the defendant that he had found another job.

When he quit, on June 29th, a slip was handed to him, made up by defendant's bookkeeper, Exhibit D. 2, page 119, which shows that the plaintiff had worked twenty-four days and was entitled to \$117.60; that he had received payments by check and in cash, and had incurred bills aggregating \$90.70; and that he was tendered and took a check for \$26.90 representing the balance, but later returned, intoxicated and refused to accept it. The check is marked Exhibit D. 3, page 120.

The Court held that the contract was signed by Thompson as the authorized agent of the defendant, but made no finding that the plaintiff was discharged by the defendant. It appeared that the plaintiff in fact quit his employment on June 29, 1923, and did not return.

POINT I.

The judgment of the learned Trial Court was contrary to the weight of evidence and in affirming that judgment, the Supreme Court fell into error.

The rule of law is that on appeal the findings of fact of a Trial Court will be deemed to be conclusive *only when there is legal evidence to support the same*. *Williams v. Connolly Contracting Co.*, 74 N. J. Law 105. The case at bar, however, bristles with inconsistencies and pal-

pable stretching of truth on the part of the plaintiff.

As above pointed out, the plaintiff rests his case solely on the alleged written contract, Exhibit P. 1, which purports to be executed by one George L. Thompson, manager, on behalf of Jacob Heinochowitz, owner.

When the plaintiff and George L. Thompson, his star witness, were cross examined respecting the execution of this supposed contract, they told widely diverging stories, both of which were flatly and unequivocally denied by the defendant.

Mr. Howard Richardson, the plaintiff, was asked on cross examination about the time of the day when the alleged contract was signed and he testified as follows:

“Q What time of the day was it when it was signed? A What time of the day when the contract was signed?

Q Yes. A Do you mean with Mr. Heinochowitz and Mr. Thompson?

Q The contract that you have referred to? A Between nine and ten o'clock at night.

Q In the evening? A Yes.

Q What time did you have supper that night? A We had supper between six and seven o'clock.

Q So, this was a couple of hours afterwards? A Yes, sir; *after I cleared the kitchen out*” (Case, p. 37, ll. 15-25).

When Mr. George L. Thompson was questioned regarding the same subject matter, he testified in manner following:

“Q Was this contract prepared in its entirety at one time or was any part of it added after the instrument had been signed? A No, sir; it was prepared right there and then. Mr. Richardson excused himself

for a few minutes. *He said, 'I have something on the fire in the kitchen,' and he would be back.* He got back when the contract was finished" (Case, p. 54, ll. 12-18).

Another discrepancy in the testimony of the plaintiff and his witness can be seen in the following testimony regarding the signing of the alleged contract. Richardson, when asked whose pen Mr. Jacob Heinochowitz took hold of, replied, "His own pen" (Case, p. 33, l. 37), and when asked if Mr. Heinochowitz was unable to sign the contract, answered:

"A Mr. Heinochowitz was working around his car, taking things out of his car to put in the ice box, some things that he left in the back of the car, and he took the pen and *touched the pen on his name, and Mr. Thompson signed it*" (Case, p. 33, ll. 10-15).

Mr. Thompson's answers to corresponding questions were:

"So I signed his name first and I signed my name, and then he put dittos. He took the pen out of my hand and he said, 'That is just as good.'"

(Case, p. 54, ll. 24-28.)

"Yes; but he made me sign his name; and then I put up there 'George L. Thompson, manager,' and he grabbed the pen out of my hand and he said, 'There,' and he made a couple of dots."

(Case, p. 54, l. 39; Case, p. 55, l. 3.)

"Q Are you sure he (Mr. Heinochowitz) didn't put two dots on before you signed it? A No; he didn't.

Q Is Mr. Richardson mistaken about it? A No.

Q He isn't? A No.

Q Well, he said it the other way around.

A I don't see how he could. The two dots

were put there after he already signed the name" (Case, p. 59, ll. 3-13).

The story related by Mr. Thompson that Mr. Heinochowitz called him into the house to draw the contract while Mr. Thompson was supervising the building of cages for wild animals at nine o'clock at night (Case, p. 58, l. 15) on its very face does not ring true.

Whom are we to believe between Richardson and Thompson? Their stories are so wide apart. And when we look at the case as reflected by the powerful light of the defendant's testimony, how can we possibly say that the plaintiff has borne the burden of proof? For at (Case, p. 70, l. 30, etc.), Jacob Heinochowitz testified:

"Q Did you ever sign any contract with him or authorize anybody to sign any? A No, sir.

Q I show you Exhibit P. 1, which is a written contract, and ask you if you ever saw that before it was in court here? A Never.

Q Did you tell Mr. Thompson to go ahead and draw a contract and sign it for you? A No, sir.

Q Did you make two dots there either before Thompson signed or after he signed? A I never make dots. I can sign my signature.

Q Did you ever put two dots there either to indicate to Thompson where he should sign or to signify your approval after he had signed? A No, sir. The evening they claim, I wasn't even with them. I can prove it with Mr. Shanefield where I was.

Q Where were you that night? A Mr. Shanefield, Mr. Katz and Mr. Davis, four, five lawyers; there was a party of sixteen."

"Q Did you go into the dining room and meet Thompson and Richardson there and

oversee the writing of this contract? A
No, sir.

Q Did anything like that happen? A
No, sir. Why, it is a surprise to me.
Thompson said—

The Court: (Interrupting.) Never
mind. You answered the question”
(Case, p. 71, ll. 29-36).

Not only was the judgment contrary to the weight of evidence as above described, but the decision must fall because the burden of proving the agency to draw up this alleged contract was never borne by the plaintiff.

The declarations of an agent, though accompanying his acts, constitute no evidence of the extent of his authority, *Dowden v. Cryder*, 55 L. 329, and *Callaway v. Equitable Trust Co.*, 67 L. 44.

Agency is not provable by declarations of the alleged agent, and until he is shown to be in fact such agent, his statement that he is such agent is inadmissible to bind the party.

Standard Oil Co. v. Linol Co., 75 L. 294;

Yoshimi v. U. S. Express Co., 78 L. 281;

Nicholas v. Oram, 77 L. 220;

Ryle v. Manchester B. & L. Assn., 74 L. 840;

Dierkes v. Hauxhurst Land Co., 80 L. 369.

The defendant absolutely denies the right of Thompson to enter into the alleged contract, which bears all the ear marks of fabrication and not those of verity; for instance, the different colors of the ink used in Exhibit P. 1.

On cross examination, Howard Richardson testified:

“Q Can you account for the difference in the color of the ink in some portions of

it? A They started it off, and I went back in the kitchen, and they called me when they got it finished, and they told me to read it over, and then I signed it. You ask those two men the difference in the ink. I don't know anything about that'' (Case, p. 23, ll. 27-33).

All this points sharply to the fact that there was *no legal evidence* upon which the Trial Court could possibly base its findings of fact and consequent determination.

POINT II.

The Court was in error in admitting Exhibit P. 3.

In an endeavor to prove the terms and conditions under which the plaintiff was employed, the plaintiff offered in evidence Exhibit P. 3 (Case, p. 116) which is a letter written by George L. Thompson to the manager of the employment agency through which the plaintiff had been employed. This letter purports to show the terms under which the plaintiff was hired. It was produced by the plaintiff.

We contend that it was not binding upon the defendant. No proof was adduced to show that it had been received by Mr. Reilly; no foundation had been laid to show how, if it had been sent, it came back to the possession of the plaintiff, and, for all that appeared, it was an unsolicited testimonial, written by Thompson, without authority, never delivered, never received, and certainly not binding upon the defendant. It could only be admissible upon the theory that it was sent with the knowledge or consent of the defendant, or that he was familiar

with the terms, and that he either consented thereto or ratified the same.

In making an offer of this letter, counsel for the plaintiff stated, p. 31:

“I am going to offer this in evidence, if you don’t object to it at the present time. If you do, I will connect it up.”

Then the Court admitted it over objection, and no attempt was made by the plaintiff in any part of the case, to connect it up.

George L. Thompson, the supposed writer of the letter, was called to testify, but made no mention of having sent the letter. It was clearly incompetent, and aside from the fact that no proper foundation for the admission of the letter had been laid, it was a *self-serving declaration* by Thompson and was not binding upon the defendant. *Kieran v. Eaton*, 2 N. J. Misc. Rep. 180-183 (Sup. Ct. Mar. 3, 1924).

POINT III.

The alleged written contract was not binding upon the defendant.

Bearing in mind the fact that the plaintiff relied upon an agreement in writing, Exhibit P. 1, we contend that this agreement was binding only upon George L. Thompson because it purported to be made with George L. Thompson, manager, and the plaintiff, and was not an agreement between the defendant and the plaintiff. It did not point out the defendant as a party and he is not liable thereon, *Schenck v. Spring*, 47 N. J. Eq. 44; *Bowers v. Glucksman*, 68 N. J. L. 146; *Clement v. Young*, 70 N. J. L. 677 (at p. 681).

POINT IV.

The evidence shows that the plaintiff abandoned his employment, was not discharged, and, therefore, was not entitled to a judgment for a period beyond July 1, 1923.

The evidence in the case indicates that the plaintiff quit and was not discharged. And although the Court, in its findings of fact, states that the agreement contained in Exhibit P. 1 was entered into between the plaintiff and the defendant, there is no finding of fact that the plaintiff was discharged, or that he did not abandon his employment. The most that the Court found was that when Richardson on two or three prior occasions left the hotel and went to New York, it was with the consent of the defendant, but this was not equivalent to a finding that at the time of the row which occurred on June 29th, the plaintiff did not actually abandon his employment, or that he was then discharged without cause.

To sustain our contention that the defendant voluntarily abandoned the employ of the defendant, reference need only be had to the testimony of the plaintiff himself (p. 43).

It is clear that the plaintiff intended to quit the defendant in order to open up a restaurant for his wife in New York. This is corroborated not only by the reluctant admission of the plaintiff as above recited, but is also corroborated by Mr. Samuel Heinochowitz (Case, p. 81, l. 34, etc.) and by two disinterested witnesses, Mr. Bristow Tyler (Case, p. 96) and Mr. Gillard (Case, p. 98).

In the absence of the finding on the part of the Court showing an unlawful discharge, there

was nothing to support the state of demand in either case to the effect that the plaintiff was wrongfully and unjustifiably discharged. For these reasons, and because it appeared that the plaintiff's wages had been offered in the form of Exhibit D. 2, p. 119, covering a period up to the time of quitting, there should not have been a recovery for a sum in excess of the amount of that check.

The single ground of appeal in this case is that the Supreme Court erred in affirming the judgments of the District Court. This brings up the specifications raised on the appeal in the Supreme Court.

We, therefore, contend that the judgments in these cases are predicated on facts not found to exist, and as to those facts which the Court found, it is sufficient to say that the Court's finding is conclusive only where there is legal evidence to support the same. *Williams v. Connolly Contracting Company, supra.*

The judgment of the Supreme Court affirming the judgments of the District Court should be reversed.

Respectfully submitted,

MILTON M. UNGER,
Attorney and Counsel for
Defendant-Appellant.

THE HISTORY OF THE
CITY OF BOSTON
FROM THE FIRST SETTLEMENT
TO THE PRESENT TIME
IN TWO VOLUMES
BY NATHANIEL BENTLEY
VOL. II
PUBLISHED BY J. B. BENTLEY
1822

Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

New Jersey Court of Errors and Appeals

HOWARD RICHARDSON, <i>Plaintiff-Appellee,</i> <i>vs.</i> JACOB HEINOWITZ, <i>Defendant-Appellant.</i>	}	<i>On Appeal from the Supreme Court.</i> (Two cases.)
---	---	--

BRIEF OF PLAINTIFF-APPELLEE.

On November 21, 1923, judgment was rendered against the defendant-appellant and in favor of plaintiff-appellee in two actions brought in the District Court of the Second Judicial District of the County of Essex to recover wages earned, and for wages accruing under a written contract after the alleged wrongful discharge of plaintiff-appellee by the defendant-appellant, during which period plaintiff-appellee was unable to secure other employment. Judgment in the first action was for \$172.80 and costs and in the second action for \$400.00 and costs. The Supreme Court affirmed both judgments in favor of plaintiff-appellee on October 1, 1924, in a *per curiam* opinion.

Facts.

The plaintiff-appellee, Howard Richardson, claimed that he was employed by the defendant-appellant on May 29, 1923, as chef for defendant-appellant's hotel under a written contract (Exhibit P. 1) which provided for payment of \$150.00 per month up to June 30, 1923, and for \$200.00 per month from July 1, 1923, to September 15, 1923, and that he entered upon the performance and continued to perform his duties

under the contract until the 29th day of June, 1924, when he was wrongfully discharged by defendant-appellant and was unable to obtain employment during the remainder of the term of the contract although he diligently endeavored to do so. The first suit contained two counts—the first count for wages actually earned and the second count covering period July 1st to July 15, 1923, when plaintiff-appellant was unable to secure employment elsewhere. The second action covered the period from July 16, 1923, to September 15, 1923.

Exhibit P. 1 is as follows:

“May 29th, '23.

Grand View Park Hotel,
Morris Co., N. J.

This is to certify that I, George L. Thompson, manager of the above hotel, do hereby employ Howard Richardson as chef of the above hotel from May 29th, 1923, to June 30th, 1923, at the rate of \$150 a month, and from July 1st, 1923, the said Howard Richardson is to receive \$200.00 per month as chef to September 15th inclusive, at which date, at midnight, the term of the contract expires. The said Richardson, however agrees to remain as chief chef up to September 15th, 1923, one day per week off duty with pay.

Signed JACOB HEINOWITZ, Owner.

“ By GEORGE L. THOMPSON,
Manager.

HOWARD RICHARDSON.”

The two cases were tried together by the Judge sitting without a jury and were argued in the Supreme Court and in this Court together.

At the outset plaintiff-appellee objects to the seventh and eighth paragraphs of defendant-appellant's brief stating plaintiff-appellee abandoned his employment, and accepted payment in full. This plaintiff-appellee submits is a mere conclusion of defendant's attorney, contrary both to the findings and judgment of the District Court Judge and of the New Jersey Supreme Court, and not supported by the evidence. It is, therefore, plaintiff-appellee submits, without merit. To hold otherwise would enable any attorney to substitute his judgment for the evidence admitted at the trial.

POINT I.

The judgments of the learned Trial Court was not contrary to the weight of evidence, and the Supreme Court did not err in affirming the judgments. The judgments are amply supported by the evidence.

At the outset, plaintiff-appellee objects to a consideration of Point One of the defendant's brief which contends that the judgment of the Trial Court was contrary to the weight of evidence. This was No. 5 of defendant-appellant's specifications in the Supreme Court (Case 15). It was not argued by the defendant-appellant in the Supreme Court and, therefore, was abandoned. It cannot, it is submitted, be argued on this appeal.

It is well established that an assignment of error not referred to in the brief or in the argument is waived.

In *Harrison v. Penn. R. R. Co.*, 72 N. J. L. 407, 60 Atl. 1101, the Supreme Court said:

"The record discloses that some evidence offered by the plaintiff was received, and some offered by the defendant was excluded against the defendant's objection but as the rulings of the Court on those matters are not referred to in the brief submitted to us on behalf of the defendant, they need not be considered."

See also:

Lewis v. Lewis, 66 N. J. L. 251, 49 Atl. 453;
Com. Roofing Co. v. Palmer Leather Co.,
 67 N. J. L. 566, 52 Atl. 389.

The waiver of this issue in the New Jersey Supreme Court resulted in not legally raising it in that Court.

To permit the defendant-appellant now to reverse the judgment of the District Court affirmed by the Supreme Court, upon a ground not urged in the Supreme Court manifestly would be unfair to the Supreme Court.

In *Smith v. Wahl*, 88 N. J. L. 125, 97 Atl. 261, the Court of Errors and Appeals in holding a matter not legally raised in the Supreme Court could not be raised in the Court of Errors and Appeals said:

"The appeal was taken November 5, 1924. The exception seems to have been taken March 2, 1915. We do not question the statement of counsel that the defect was noticed at the argument in the Supreme Court, and that that Court suggested that application be made to the trial judge to supply the defect if he could. That was not enough. Fairness to the Supreme Court required

that the judges should be apprised of the fact that the trial judge had signed the exception. This evidently was not done, since the memorandum of the court expressly states that no exception was taken that raised the question. We cannot review a question that has not been legally raised in the Supreme Court."

But should the Court hold the defendant-appellant had not waived his right to argue Point One in this Court by his failure to argue the point in the Supreme Court, plaintiff-appellee contends the judgments are not contrary to the weight of evidence.

It is firmly established by numerous decisions of the New Jersey courts that Appellate Courts will not review a District Court's findings where there is any evidence to support the findings.

In *Rudolph Wurlitzer Mfg. Co. v. United Realty Co.*, 87 N. J. L. (Err. & App.) 656, 94 Atl. 630, Mr. Justice Kalisch, speaking for the Court of Errors and Appeals, reversing the Supreme Court which had reversed the District Court, said:

"If, therefore, there was any testimony **NO MATTER HOW SLIGHT**, which permitted the trial judge to draw an inference there has been an acceptance, the judgment of the District Court was correct."

See also:

Nordstrom v. Paine, 86 N. J. L. (Err. & App.) 361, 91 Atl. 592;

Van Nest v. Husch, 87 N. J. L. (Err. & App.) 338, 93 Atl. 568.

Moreover, where the Supreme Court determines there is evidence to support a verdict, the Court of Errors will not disturb the finding.

In *Eberle v. Stegman*, 121 Atl. (Err. & App.) 618, the Court of Errors and Appeals in a *per curiam* opinion said:

“Counsel for the defendant-appellant argue the points at length and cite cases to show that the weight of evidence is for the jury, but might have stood upon the ground that the Supreme Court found that there was evidence to support the verdict, which is so and that by the settled law this Court will not disturb that finding.” See *Breitbart v. Lurich*, 1 N. J. Adv. R. 229, 120 Atl. 11.

The following excerpts from the evidence taken from the State of Case clearly show that under the above decisions the judgments should not be reversed. Plaintiff testifying (Case, p. 21, l. 26):

“Q Was there a writing signed in your presence? A Mr. Heinochowitz told Mr. Thompson to draw this writing, and I went on back to the kitchen then. Q Is that the writing (showing witness)? A That is the writing. And Mr. Heinochowitz called me back after that, about ten minutes after. Him and Mr. Thompson were talking in the dining-room—and signed this.

The Court: Who signed it?

The Witness: Mr. Heinochowitz said, ‘My hands is dirty’ he was fooling with his car; and he made two dots here, and he said: ‘Mr. Thompson, go ahead now.’ And he left everything up to him, and Mr. Heinochowitz—Mr. Thompson signed on those two dots and I signed underneath? Q Was there any stipulated time as to when your wages were to be paid? (Reading paper): ‘This is to certify that I, George L. Thompson, manager of the above hotel, do hereby employ Howard Richardson as chef of the above hotel, from May 29, 1923, to June 30, 1923, at the rate of \$150 a month, and from July 1, 1923, the said Howard Richardson is to receive \$200 per month as chef to September 15th, inclusive, at

which date, at midnight, the term of the contract expires. The said Richardson, however, agrees to remain as chief chef up to September 15, 1923, one week off duty with pay.' At the time Mr. Thompson signed this contract—he signed it 'Jacob Heinochowitz, owner, by George L. Thompson'? A Yes. Q Was Jacob Heinochowitz present? A Yes, he was present. Q And did he ask Mr. Thompson to sign that? A He directed Mr. Thompson to sign that."

Cross examination, plaintiff testifying (Case, p. 35, l. 26):

Q At all events, you had this contract delivered to you that night? A Mr. Heinochowitz took a copy and gave me a copy. Q Who made the copy? A Mr. Thompson made the copy under Mr. Heinochowitz's dictation. Q Did you sign the copy? A I did. Q Did you sign your copy? A I did. Q And when you signed your copy did you keep it? A I did, sir. Q Has it been in your possession ever since? A Ever since, till I turned it over to Mr. Campbell.

Mr. Thompson, direct: speaking to defendant (Case, p. 50, l. 25):

A (Continuing.) I told him I had too much to do; I couldn't do the cooking and look after the place. He said, "We will get a chef." So he and I went to New York ourselves and went around to a number of employment agencies on the East Side, mostly around the Bowery, at his suggestion, and we couldn't get anybody. We went along the Bowery to the different employment agencies. I said, "They are not experienced people down here; they are mostly cheap people. We better go uptown to the employment district, which is on Sixth avenue." He said, "I am going out to the farm. You go up yourself and see what you can do." I went around to see a number of them and I could not get a chef. He didn't want to pay more than twenty dollars a week. I wrote him a letter that night, I believe. See Ex. P. 4.

Mr. Thompson direct (Case, p. 53, l. 12):

Q I show you this contract P. 1 and ask you whether that contract was drawn by you. Is that your handwriting? A Yes, sir, that is mine. Q In whose presence was that contract drawn? A In Mr. Jacob Heinochowitz's and Mr. Richardson's. Q And who instructed you to draw that contract? A Mr. Jacob Heinochowitz. Q Will you tell the Court the conversations leading up to the drawing of that contract? A I will. I was outside working, supervising with some carpenters, some cages to be made for wild animals that he had. They were to be in cages and we had boxes, crates. We had to get them out of the boxes that night.

The Court: I don't care about that. You were out there doing that work.

A (Continuing.) And Mr. Heinochowitz came to me and said, "That was a dandy dinner, or supper, that man got up. He is a good cook." He said, "Did the employment agency or you put him under contract for the season?" I said, "No, I haven't got him under contract, unless the employment agency did." And he said, "Well, you are a hell of a manager," he said, "to bring a man out here. Suppose he don't like the place and goes back and leaves us on our uppers." He said, "You better get him under contract." I said, "I can't leave this work"; and he made me leave the work and come inside and write the contract. He sat there. He dictated the contract all the way through. I wrote it out. His hands were dirty; he had grease or something on them; and he said he couldn't draw up the contract. I asked him if he had a typewriter there. He said no, he didn't. Q Was this contract prepared in its entirety at one time or was any part of it added after the instrument had been signed? A No, sir; it was prepared right there and then. Mr. Richardson excused himself for a few minutes. He said, "I have something on the

fire in the kitchen," and he would be back. He got back when the contract was finished; and it was finished. And Mr. Heinochowitz asked him if that was satisfactory and he said yes. So I says, "Sign this, Jake. You got charge of the help around here. You sign it." So I said, "Well, I will sign your name to it. You can sign my name." So I signed his name first and I signed my name, and then he put dittos. He took the pen out of my hand and he said, "That is just as good." Q I call your attention to this clause: "One day off a week, off duty, with pay." Was that drawn after the contract was signed? A That was drawn before the contract was signed. Q Was that read off to Mr. Heinochowitz in Richardson's presence prior to the time it was signed? A Yes. Mr. Heinochowitz has a contract just like that.

The Court: Signed by all the parties?

The Witness: Yes, but he made me sign his name; and then I put up there "George L. Thompson, manager," and he grabbed the pen out of my hand and he said, "There," and he made a couple of dots.

Jacob Heinochowitz, direct (p. 62, l. 26):

A Richardson—not particularly to me. My brother was there at the time. He made the check. He said, "I might as well tell you now: My wife is buying a restaurant and I expect to get possession of it in about a week, and I will have to quit." I said, "Won't you stay until the end of the month?"

Jacob Heinochowitz, direct (Case, p. 66, l. 16):

A Yes, sir. We were in the lobby, where the desk is. Mr. Tyler sat down. I told him when he got there, and I told him how many days he was present, and he figured it out as twenty-four days, I think—I don't remember—at the rate of a hundred and fifty dollars a month. And Harry said he gave him three dollars in cash and a dollar's worth of medicines—some soaps and different things; when

he went away the second time he asked me for money again, and I told him I didn't have any, but I would lend him my railroad ticket. Q How many days did you say you figured it up? A Two days absent, and the last time three. I said, "I will let you have my railroad ticket." Q What date was that? A The 29th, or the 30th, when he came there for his money, the third day, when he was away three days. I told him I would lend him my railroad ticket. It cost me \$13.35 ten trips; so two trips would cost him \$2.70, while the other way would cost him four dollars; it would save him a dollar and thirty cents. So I gave him my ticket and he brought back my ticket; and took off \$2.70 for two trips.

Defendant, cross examined (Case, p. 76, l. 18):

Q You claim you had a party of friends—Mr. Shanefield and fifteen or twenty other lawyers? A There were sixteen. Q What time did they arrive? A They arrived about six o'clock or seven. Q They were your guests? A Yes. Q And you were anxious to get a meal for them? A *That is why we got a chef.* Q *Oh, you did get a chef, then, did you?* A Yes. Q All right. That is what I wanted to know. Mr. Richardson cooked that meal, did he not, for the guests? A Yes. Q And you know that he cooked it? A Yes, sir.

Not only does the testimony above given by plaintiff's witnesses show that contract P. 1 employing plaintiff was executed under the express instructions of defendant, but defendant admits that he requested plaintiff to continue his employment with him, had charge of all details of account in attempting to settle plaintiff's claim and frankly admitted that he, the defendant, did get plaintiff as his chef.

A consideration of the testimony quoted by the defendant-appellant under Point One of his brief merely goes to the creditability of the wit-

nesses. The creditability of the testimony of the witnesses was passed upon by the Trial Court affirmed by the Supreme Court and the Court of Errors and Appeals will not reverse judgment so affirmed when the brief merely attacks creditability of witnesses. In *Osburn v. De Young*, 122 Atl. (Err. & App.) 808, Mr. Justice Kalisch, speaking for the Court of Errors and Appeals, said:

“Much space is devoted in appellants’ brief in support of their contention that the jury’s verdict was against the weight of the evidence.

There can be no good excuse offered why an elementary legal rule should be so often disregarded by counsel in arguing on the weight of the evidence in a civil case at law, on appeal before this Court, which is only concerned with correcting errors in law. WITH THE CREDITABILITY OF THE WITNESSES OR THE WEIGHT OF THE EVIDENCE WE HAVE NO CONCERN.”

It is submitted that a most favorable consideration of the testimony for the defendant-appellant will show at most the evidence conflicting. Under such circumstances it is uniformly held that findings of fact by the Trial Judge will not be reversed.

In *Hyatt Roller Bearing Co. v. Penn. R. R. Co.*, 92 N. J. L. 94, aff. 631, the Court said:

“Since a Trial Court possesses the opportunity of viewing the witnesses and considering the creditability of their testimony, its finding upon conflicting testimony will not be disturbed.”

See also *Steinmeyer v. Phoenix Cheese Co.*, 91 L. (Err. & App.) 351; *Interstate Chemical Co. v. James Leo Co.*, 110 Atl. (Err. & App.) 903.

At Case, p. 111, l. 30, the Trial Court in its opinion said:

“The attitude of the witnesses of the defendant with the exception of Mr. Gillard, the last witness, was one which does not tend to impress the Court with the entire honesty of the testimony given. I am not at all impressed with Mr. Heinochowitz’s testimony that he did not run this hotel or own it or was the man responsible for it.”

Defendant-appellant cites numerous cases pertaining to the law of agency. As abstract principles of law, plaintiff-appellee does not question their soundness, but contends the same have no application. The testimony above quoted shows plaintiff-appellee was employed at the direction and in the presence of defendant-appellant and the Trial Court Judge so found saying (Case, p. 111, l. 10):

“The evidence clearly shows that Mr. Thompson was up there on numerous occasions when he was doing certain work for Mr. Heinochowitz; whether he was doing it as a volunteer or whether he was doing it at Mr. Heinochowitz’s request, it does not clearly appear in this particular action; but that he was there, and at Mr. Heinochowitz’s request he drew up this contract. It seems to me that it makes very little difference whether Mr. Heinochowitz put these two ditto marks before or after Thompson signed the agreement, or whether he didn’t put them there at all. I find that Mr. Thompson was acting as the authorized agent for Mr. Heinochowitz in the making of this agreement.”

A citation of authority to prove agency would seem wholly unnecessary where the principal was present and at his direction a contract was made and signed as the Court has found.

POINT II.

The admission in evidence of a letter, Exhibit P. 3, written by George L. Thompson to Thomas F. Riley, purporting to set forth the terms of the plaintiff's employment, was not error.

The letter was written by George L. Thompson to the employment agency from which he had secured the plaintiff to work as chef in defendant's hotel during the season of 1923. It was written within two days after plaintiff had reported for work, and expressed the personal satisfaction both of Mr. Thompson and the defendant with plaintiff's services and briefly enumerated the terms of employment. This letter (Exhibit P. 3) was obtained from the employment agency by plaintiff-appellee (Case, p. 32).

The admission of the above letter was objected to by defendant on the ground "it was not binding upon the defendant." This directly raises the question of Thompson's authority to bind defendant by an admission.

The evidence introduced by plaintiff shows Thompson was held out by the defendant to be manager of defendant's hotel, and that defendant instructed Thompson to place plaintiff, who was sent by the employment agency, under a written contract.

The plaintiff, Howard Richardson, said (p. 20, l. 25):

"Q Did he say he had a manager or not?

A Yes. He told me Mr. Thompson was the manager. Q Did he tell you whom you would take orders from? A Yes; I would have to take orders from Mr. Thompson; he wouldn't have anything to do with the

food. Q Mr. Heinochowitz took you to the hotel? A Yes, direct to the hotel. Q You met Mr. Thompson there? A I met Mr. Thompson there. And I noticed on my letter of introduction to Mr. Thompson and Mr. Heinochowitz together to be sent—that is, to be sent back to the office and registered in the office, and I did that.”

The witness, George L. Thompson, said (p. 48, l. 8):

“Q What conversation did Mr. Heinochowitz have with you, if any, relative to employing chefs, stewards or other help for the conduct of the hotel business at Hackettstown, New Jersey, for him? A He sent me out a number of times to get help. The Court: No. You are asked what conversation you had. The Witness: He told me to hire all the help for the hotel and the grounds. Q Acting under those instructions or orders did you hire anybody during May, 1923, for Mr. Heinochowitz? A I did. Q Whom did you hire, roughly speaking, and what was the nature of the duties of the persons whom you did hire? A I hired Mr. Richardson as chef, chief chef, and I hired carpenters and bricklayers and cement workers and painters and decorators, and things like that.”

The plaintiff, Howard Richardson, said (p. 30, l. 18):

“Q Describe that receipt (Exhibit P. 2) which you said you gave Mr. Heinochowitz. A It had The Grand View Park Hotel. Mr. Unger: Was the paper signed by Mr. Heinochowitz? The Witness: The paper was signed in the presence of Mr. Heinochowitz by Mr. Thompson. Q Is that the receipt (showing witness)? Is that signed in your presence? A That was signed in my presence. Q Was that signed in the presence of Mr. Heinochowitz? A Yes, it was signed in the presence of Mr. Heinochowitz. Q

Did Mr. Heinochowitz instruct Mr. Thompson to sign that or not? A He did."

The receipt of card (Exhibit P. 2) expressly provided that it should be signed and returned at once by mail if applicant is engaged.

Relevant declarations or admissions of a manager in course of negotiations of matters referred to him and germane to the question are admissible in an action between the parties growing out of the same transaction.

In *Hill v. Adams Express Co.*, 77 N. J. L. 19, 71 Atl. 683, the Supreme Court expressly announced the above rule and held a letter written by the general manager in adjusting a claim was properly admitted in evidence.

See also *Insurance Co. v. Woodruff*, 26 N. J. L. 541.

The above-quoted testimony shows that Thompson was conducting negotiations for employment of plaintiff through the employment agency upon express orders of defendant, and that his letter was only in conformity with his duty to notify the employment agency. It is submitted, therefore, that the admission of this letter is directly within the case of *Hill v. Adams Express Co.*, cited above.

Moreover, it appears from the evidence (Case, pp. 21, 53, 54) that the contract of employment was made under the express directions of defendant-appellant and Mr. Thompson, the manager for defendant-appellant was directed to take necessary steps to secure a chef. The Receipt or Card (Exhibit P. 2) expressly required that it should be signed and returned at once by mail if applicant was engaged. The letter was evidential of the fact that the card was mailed

and the requirement complied with. It does not appear the Trial Court made any improper use of the letter, and the presumption is that the Trial Court used it properly.

But assuming there was error in admitting the letter, such admission was harmless as the facts were otherwise fully established by the contract and the letter was merely cumulative evidence. In such cases, there will be no reversal for such improper admission.

In *Runk v. Ten Eyck*, 24 N. J. L. (Err. & App.) 756, plaintiff proved possession and seisen of property by competent evidence. He then introduced a map which likewise proved possession and seisen, but which was improper evidence. The Court, however, refused to reverse the judgment, holding such map was merely cumulative proof, saying at page 758:

“The paper used as a map was merely cumulative proof. It was not necessary for making out the plaintiff’s case; and it is manifest that no prejudice could have resulted to the defendant from its admissions, if it had been detached from the certificate, respecting the size of the dam. The judgment, therefore, ought not to be disturbed on that ground.”

And in *Meyers v. Weger*, 62 N. J. L. 432, 42 Atl. 280, suit was brought for money loaned and the Court erroneously admitted a note, but in refusing to reverse the judgment of the lower court, the Court of Errors & Appeals said:

“If the note had been endorsed its effect would have been merely cumulative, no injurious error was committed in receiving it.”

And in *Van Nest v. Hirsch*, 87 N. J. L. (Err. & App.) 336, 93 Atl. 568, Court of Errors & Appeals, said:

“The objections presented by the defendant regarding the admission of testimony, and the rulings upon the evidence admitted, cannot be held to be injurious to him in this view of the case, since the essential questions of fact upon which the plaintiff’s claim depended were supported by the finding. The judgment will be affirmed.”

The terms of employment contained in letter (Exhibit P. 3) is proved by the contract (Exhibit P. 1) and we submit that the admission of the letter, if erroneous, was merely cumulative and directly within the above decisions and such error, therefore, is not grounds for reversal.

POINT III.

The Court found that contract, P. 1, was entered into by Mr. Thompson as the authorized agent of defendant, and that the contract was made at defendant’s request (Case, p. 111, l. 1, l. 16).

The contract, Exhibit P. 1, states that I, George L. Thompson, manager of the above hotel (Grand View Park, owned by defendant), do hereby employ Howard Richardson as chef of the above hotel. Signed—Jacob Heinochowitz, owner—By George L. Thompson, manager. Howard Richardson.

The body of the contract clearly shows Thompson intended to act as manager for the hotel and not individually and the manner in which the contract was signed shows the contract is that of the owner and not Thompson’s individual contract.

The case of *Sun Printing & Publishing Assoc. v. Moore*, 183 U. S. 642, is directly in point to the effect that the contract is that of the principal and not that of the agent. The body of the contract in that case named only the agent, but it was signed Chester Lord for Sun Printing & Pub. Assoc. In holding it was a contract binding the principal the Supreme Court of the U. S. said:

Where the question of authority in making contracts arises there is a broad line of distinction between instruments under seal and stipulations in writing not under seal or by parol. In the former case the contract must be in the name of the principal, must be under seal and must purport to be his deed and not the deed of agent covenanting for him, *Stanton v. Camp*, 4 Barb. (N. Y.) 274. In the latter cases the question is always one of intent and the Court being untrammelled by any other consideration, is bound to give it effect. As the meaning of the lawmaker's law so the meaning of the contracting parties is the agreement. Words are merely the symbols they employ to manifest their purpose. If the contract be unsealed and the meaning clear, it matters not how it is phrased nor how it is signed, whether by the agent for the principal or with the name of the principal by the agent or otherwise—

Now, while Lord is referred to in the body of the first writing as an individual, he signed the agreement "for the Sun Printing & Pub. Assoc." Clearly this was a disclosure of the principal and an apt manner of expressing an intent to bind such principal, *Bradstreet v. Baker*, 14 R. I. 546, 549; *Tucker Man. Co. v. Fairbanks*, 98 Mass. 101.

Assuming Thompson had authority to make contract (Ex. P. 1), we submit the above case is dispositive and that the contract is that of defendant and binding on him. The following excerpts of testimony clearly support the finding that Thompson was authorized to execute the

contract (Ex. P. 1), and did so in the presence of defendant himself and upon his express instructions after having dictated and had the contract read to him before it was executed.

Howard Richardson, direct (Case, p. 21):

Q Did you enter into a discussion with Mr. Thompson or Mr. Heinochowitz or both of them regarding the employing of you as a chef of the Grand View Hotel? A Yes. Mr. Heinochowitz said he was so hungry, he wanted a good, cooked meal; would I mind cooking the meal at night. I said no. He would talk with me after dinner. So I got busy and cooked the dinner.

Q When did you discuss the matter of terms of your employment? A After the dinner Mr. Heinochowitz and Mr. Thompson carried me into the dining-room.

Mr. Unger: Carried you?

The Witness: I walked in. They called me. They didn't pick me up bodily.

Q What were the terms of the agreement which you discussed, if any? A The terms of the agreement, that I was to receive a hundred and fifty dollars for the first month and two hundred dollars for the month after that.

Q Was there a writing signed in your presence? A Mr. Heinochowitz told Mr. Thompson to draw this writing, and I went on back to the kitchen then.

Q Is that the writing (showing witness)? A That is the writing. And Mr. Heinochowitz called me back after that, about ten minutes after. Him and Mr. Thompson were talking in the dining-room—and signed this.

The Court: Who signed it?

The Witness: Mr. Heinochowitz said, "My hands is dirty"; he was fooling with his car; and he made two dots here, and he said, "Mr. Thompson, go ahead now." And he left everything up to him, and Mr. Heinochowitz—Mr. Thompson signed on those two dots and I signed underneath.

Q Was there any stipulated time as to when your wages were to be paid? (Reading paper): "This is to certify that I, George L. Thompson, manager of the above hotel, do hereby employ Howard Richardson as chef of the above hotel from May 29, 1923, to June 30, 1923, at the rate of \$150 a month, and from July 1, 1923, the said Howard Richardson is to receive \$200 per month as chef to September 15th, inclusive, at which date, at midnight, the term of the contract expires. The said Richardson, however, agrees to remain as chief chef up to September 15, 1923, one week off duty with pay." At the time Mr. Thompson signed this contract—he signed it "Jacob Heinochowitz, owner, by George L. Thompson"? A Yes.

Q Was Jacob Heinochowitz present? A Yes, he was present.

Q And did he ask Mr. Thompson to sign that? A He directed Mr. Thompson to sign that.

George L. Thompson, direct (Case, p. 52, l. 2):

Q What did you do? A That was pretty late. I couldn't remember the date exactly. But I kept on going along every day. I did all I could to see what help I could get.

Q Did you report to Mr. Heinochowitz what the result of your efforts were? A Yes.

Q What did you report to him? A I told him Mr. Richardson would not come under a hundred and fifty dollars up to the first of July and after that he wanted two hundred dollars, and it was up to him to decide.

Q What did he say? A He said, "You go ahead. You go back and get him," and he wanted me to make a special trip back to get him, and I went back about the latter part of the week, the 18th or 19th, in or around those dates, of June.

By Mr. Campbell.

Q Of June? A I mean May. And I got him. I interviewed Mr. Richardson in the employment office, and I told Mr. Reilly I would take him.

Q When did Mr. Richardson report? A He reported on the 29th of May, the day before Decoration Day.

Q Did you see him arrive at the hotel?

A I did.

Q In whose company was he at that time?

A He came in a Ford with Mr. Heinochowitz. He had telephoned up to the hotel. I came up from the city that day, and I said, "The chef is going to be sent out today sure." So he said, "Why didn't you bring him with you?" I said, "Well, he had to get some clothes and things, and I had other work to do after." He said, "Are you coming up alone?" He gave me "blazes" for not bringing him with me. I said, "Don't worry. I got the employment agency's word that he would be here." So he came out, and that is the end of it.

Q Did you in Mr. Heinochowitz's presence discuss the terms of the agreement or draw any contract with Mr. Richardson? A I did.

Q I show you this contract P. 1 and ask you whether that contract was drawn by you. Is that your handwriting? A Yes, sir; that is mine.

Q In whose presence was that contract drawn? A In Mr. Jacob Heinochowitz's and Mr. Richardson's.

Q And who instructed you to draw that contract? A Mr. Jacob Heinochowitz.

Q Will you tell the Court the conversations leading up to the drawing of that contract? A I will. I was outside working, supervising with some carpenters, some cages to be made for wild animals that he had. They were to be in cages, and we had boxes, crates. We had to get them out of the boxes that night.

The Court: I don't care about that.

You were out there doing that work.

A (Continuing.) And Mr. Heinochowitz came to me and said, "That was a dandy dinner, or supper, that man got up. He is a good cook." He said, "Did the employ-

ment agency or you put him under contract for the season?" I said, "No, I haven't got him under contract, unless the employment agency did." And he said, "Well, you are a hell of a manager," he said, "to bring a man out here. Suppose he don't like the place and goes back and leaves us on our uppers." He said, "You better get him under contract." I said, "I can't leave this work"; and he made me leave the work and come inside and write the contract. He sat there. He dictated the contract all the way through. I wrote it out. His hands were dirty; he had grease or something on them; and he said he couldn't draw up the contract. I asked him if he had a typewriter there. He said no, he didn't.

Q Was this contract prepared in its entirety at one time or was any part of it added after the instrument had been signed?

A No, sir; it was prepared right there and then. Mr. Richardson excused himself for a few minutes. He said, "I have something on the fire in the kitchen," and he would be back. He got back when the contract was finished; and it was finished. And Mr. Heinochowitz asked him if that was satisfactory and he said yes. So I says, "Sign this, Jake." And Jake says, "What are you manager for? You got charge of the help around here. You sign it." So I said, "Well, I will sign your name to it. You can sign your name." So I signed his name first and I signed my name, and then he put dittos. He took the pen out of my hand and he said, "That is just as good."

Q I call your attention to this clause: "One day off a week, off duty, with pay." Was that drawn after the contract was signed? A That was drawn before the contract was signed.

Q Was that read off to Mr. Heinochowitz in Richardson's presence prior to the time it was signed? A Yes. Mr. Heinochowitz has a contract just like that.

The Court: Signed by all the parties?

The Witness: Yes; but he made me sign his name; I put up there "George L. Thompson, manager."

Agency may be proved by evidence of agent under oath on witness stand. *Leonard v. Standard Aero Corp.*, 95 N. J. L. (Err. & App.), 235, 112 Atl. 252, and we submit this has been done in the present case in addition to proving agency by plaintiff himself.

Counsel for defendant-appellant cites three cases to show that as a matter of law he is not liable on the Contract Exhibit P. 1. We submit none of the cases are in point and none interpret a contract similar to the one involved in the present action.

In *Schenck v. Spring Lake Beach Im. Co.*, 47 N. J. Eq. 44, 19 Atl. 881, the contract was signed by Lucas and an attempt was made to hold the Spring Lake Imp. Co., which of course, was impossible.

In *Bowers v. Glucksman*, 68 N. J. L. 146, 52 Atl. 218, the contract was signed by only one party, and the Court held it could not be enforced against the party not signing because of the Statute of Frauds. In the present case, the signature of both parties to this action is affixed to the contract (Exhibit P. 1).

In *Clement v. Young-McShea Amusement Co.*, 70 N. J. Eq. 677, 67 Atl. 82, John L. Young was named in the contract and affixed his personal signature as John L. Young. The plaintiff attempted to hold the Amusement Company and the Court properly held such could not be done as it was not named in, a party to, or signed the contract.

In the present case, the intention of the parties is evident and under the authority cited above for plaintiff-appellee, we submit the judgments for plaintiff-appellee should be affirmed.

POINT IV.

The evidence cleearly shows plaintiff-appellee did not voluntarily leave his employment, but was wrongfully discharged and therefore entitled to the amount of his recovery.

The contention of defendant-appellant that the Trial Court made no finding of wrongful discharge, and that plaintiff-appellee voluntarily abandoned his contract is without merit.

The question of wrongful discharge and voluntary abandonment was raised in specification No. 3 (Case, p. 14), and at the trial turned upon the question as to whether plaintiff-appellee had gone to New York on two or three occasions with the knowledge or consent of defendant-appellant.

A consideration of the evidence clearly shows that defendant-appellant placed a new crew in the plaintiff-appellee's position as chef for the alleged reason that plaintiff had gone away leaving defendant "flat," and thereby breached the contract of employment (Case, pp. 26, 27, 64, 65, 82).

The Trial Court, however, made an express finding there had been no breach saying (Case, p. 111), "I further find as a fact that when Richardson (plaintiff-appellee) on these two or three occasions left the hotel of Heinochowitz and went down to New York, it was with the consent of Mr. Heinochowitz, and that he did not by so going away breach his contract."

We submit the above excerpt of the opinion of Trial Court clearly shows a finding that plaintiff-appellee did not voluntarily abandon his contract of employment but was wrongfully discharged by defendant.

In the language of the Supreme Court (Case, p. 123), "there was ample evidence to support this finding" as is shown by the following excerpts.

Howard Richardson, plaintiff, testifies, direct (Case, p. 26, l. 6):

Q What were the circumstances which caused you to leave your employment with the Grand View Hotel the latter part of June, 1923? A There was nothing for me to do, only with Mr. Heinochowitz. Q Tell the Court what those circumstances were. What happened? What led up to it? A I went in on the twenty-eighth—twenty-seventh, yes, twenty-seventh—twenty eighth—

The Court: Of what?

A Of June. That night after my day's services had been performed, and I had to be in court in New York City at nine o'clock on the twenty-ninth—so I was there, and I found out that my case there was after. And I caught the next train back, and I got back on the twenty-ninth before twelve o'clock. Q Did Mr. Heinochowitz tell you you had his permission to leave? A Sure. He gave me his commutation ticket. He said, "Use this. Go ahead, take this, and you can pay me the difference on it, if you want to, or just pay me for what you use." Q And you returned as quickly as you were through? A After I was through. Q Did Mr. Heinochowitz complain about your cooking? A No; he couldn't complain. Q He was perfectly satisfied? A Everybody was perfectly satisfied. Q When you went to New York on the eve-

ning of the twenty-eighth did he say anything with reference to this particular contract? A Yes. He told me to bring it back with me and he would write up a different one, and pay me my money. Q When you got back on the twenty-ninth what transpired between you and Mr. Heinochowitz? A When I got back on the twenty-ninth I seen a whole crew. When I came back this Mr. Heinochowitz (indicating) called me into the dining-room. So I went in. He said, "This is the new man. We can't use you because we think you have been kicking on us." I said, "You haven't been hearing me kicking." I said, "A person may get hot in the kitchen anyway."

Mr. Unger: Who said that?

A This Heinochowitz (indicating). So Mr. Heinochowitz said, "Well, I may use you; but anyway, I will have to discharge you now," and he said, "Sam will pay you." Q Did you say anything about selling the hotel or not at that time? A Yes, yes; I know they were trying to sell it, because Heinochowitz brought a gentleman up there again that is in New York City now that he tried to sell the hotel to; but the gentleman didn't like it; and Mr. Heinochowitz turned the gentleman over to me and told me to take him all around and show him through the hotel. Q Did they say the house was disposed of and a new man was in possession? A Yes; that Mr. Taylor purchased that, and that it was turned over to him. Q That was the excuse? A Yes.

Howard Richardson, plaintiff, cross examined (Case, p. 38, l. 29):

Q And then you continued to work there, and at the end of the month, the 28th, or 29th, was the time you had the difficulty? A Yes. Q Did I understand from you that you were discharged on that day? A Yes, I was. Q What happened to cause your discharge? A What happened to cause my discharge? Another crew was in.

Howard Richardson, plaintiff, cross examined
(Case, p. 39, l. 37):

Q Did you tell anybody at the farm that you had found a job; that your wife was opening a restaurant in New York and that you were going to quit at the end of June?

A No. Q Never told that to anybody? A Never told anybody.

Howard Richardson, plaintiff, cross examined
(Case, p. 43, l. 19):

Q You did say something about having to straighten her out? A Yes, I told Mr. Heinochowitz my wife was expecting to get a small, little restaurant, and I had a former chef who would work in my place, and I would go there and straighten her out one day or two days, whatever it would take, if it would be with his consent; and he said, "All right, I want you to stay with me and keep you winter and summer, and you can go and come right back."

Jacob Heinochowitz, direct (Case, p. 66, l. 29):

The Court: How many days did you say you figured it up? Witness: Two days absent, and the last time three. I said, "I will let you have my railroad ticket." Mr. Campbell: What date was that? A The 29th, or the 30th, when he came there for his money, the third day, when he was away three days. I told him I would lend him my railroad ticket. It cost me \$13.35, ten trips; so two trips would cost him \$2.70 while the other way would cost him four dollars; it would give hi ma dollar and thirty cents. So I gave him my ticket, and he brought back my ticket; and took off \$2.70 for two trips.

We submit that under the decisions cited in Point One of this brief, the evidence supports the finding of fact by the District Court that plaintiff did not voluntarily abandon the contract, Exhibit P. 1, and its judgment therefore should not be reversed.

We contend that the evidence introduced at the trial for the plaintiff-appellee fully shows that he was employed by the defendant, wrongfully discharged and unable to secure employment and that the finding of Trial Court is conclusive as there is evidence to support the finding. *Rudolph Wurlitzer Mfg. Co. v. United Realty Company*, 86 N. J. L. (Err. & App.) 656; 94 Atl. 630, cited and quoted above.

The judgments of the New Jersey Supreme Court affirming the judgments of the District Court should be affirmed.

Respectfully submitted,

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Respectfully submitted,

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