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Notice of Appeal and Grounds of Appeal

(Filed August 19, 1918).

NEW JERSEY SUPREME COURT

S. MARTIN JACOBSEN, Plaintiff-Appellee, vs. PETER A. PETERSON, Defendant-Appellant.	On Contract Notice of Appeal and Grounds of Appeal.

SIRS:

Please take notice that the defendant, Peter A. Peterson, hereby appeals to the New Jersey Court of Errors and Appeals from the entire judgment of the New Jersey Supreme Court rendered or entered in the above stated cause on the 22nd day of June, 1918.

Please further take notice that the following are statements of the grounds of appeal upon which this appeal is taken in order to secure a reversal of the judgment entered in above cause, to wit:

1. The plaintiff-appellee having failed to show any damages by reason of the alleged negligence of the defendant-appellant.

2. The evidence shows that the plaintiff-appellee gained by reason of the alleged negligenc of the defendant-appellant.

3. There was no evidence produced to show that said plaintiff-appellee was legally compelled to pay said judgment of Three hundred and eighty dol-

lars ($380.00). Therefore, the presumption is that the payment was voluntary.

4. The deed given by said George Christopherson to said plaintiff-appellee was afull warranty deed and contained covenants against all encumbrances; and, thus afforded plaintiff-appellee full protection against all liens and encumbrances against said property.

5. An attorney is only liable to his client for the actual damages sustained by reason of his negligence and he cannot be held responsible for loss of prospective profits.

6. The said Supreme Court holds in substance that an attorney is liable to his client for loss of prospective profits caused by reason of his negligence.

7. As the action against defendant-appellant is based on negligence, he is not liable for loss of all the profits the plaintiff-appellee would have made by the transaction if the title had been as represented, but he is only liable for the actual damages sustained by the plaintiff-appellee.

8. The measure of damages is not the amount the client is caused to pay out, but the amount he is legally compelled to pay out to remove the lien from the premises. And, the measure of damages is not the loss of profits or gain which the client would or could have made had the title been as represented.

9. The action was not brought to recover for loss of profit, but for negligence, and, in such case, the plaintiff is only entitled to reimbursements caused by the change of his position.

10. Only such damages can be recovered as were sustained by the plaintiff-appellee at the time of the commencement of the action. At that time it was proven that he had sustained none.

11. As it is the duty for an injured party on whom a legal wrong has been perpetrated to use all reasonable means to arrest the loss and to mitigate the injury according to the opportunities that may fairly be or appear to be within his reach, it was necessary for the plaintiff-appellee to have sold or disposed of the property, if by that act the injury complained of could have been mitigated.

12. The plaintiff-appellee did not file his suit for loss of profits and he could not have maintained his action on that theory. His action was for actual damages sustained, which were recoverable. However, he failed to show any damages.

13. In order the recover profits or special damagees it must first be shown that the loss was the necessary and proximate result of the injury complained of.

14. All legal damage, whether general or special, must naturally and proximately result from the act or default complained of.

15. All damages of which the law takes notice must be the natural and proximate effect of the wrongful act charged.

16. Damages not connected directly with the breach of duty and such as cannot be said to have entered into the contemplation of the parties at the time of the wrongful act are remote and should be denied.

17. Where an injured party finds that a wrong has been perpetrated on him, he should use all reasonable means to arrest the loss. This rule applies equally to actions *ex delicto* and actions *ex contractu.*

18. The elementary rule for the measure of damages res upon the principle of compensation to the party injured for the loss sustained, with the least burden to the party guilty of the breach consistent with the idea of fair compensation, and with the duty upon the party injured to exercise reasonable care to mitigate the injury, according to the opportunities that may fairly be or appear to be within his reach. That rule obtains to actions *ex delicto* as well as to actions *ex contractu.*

Dated, August 17th, 1918.

Yours respectfully,

PETER A. PETERSON,
Defendant-appellant.

To: LEO GOLDBERGER,
Attorney for Plaintiff-appellee;
To: S. MARTIN JACOBSEN,
Plaintiff-appellee
(Or whom it may concern.)

Rule of Reversal and Remittitur.

(Filed June 22, 1918.)

NEW JERSEY SUPREME COURT.

S. MARTIN JACOBSEN, vs. PETER A. PETERSON.	On Appeal Rule of Reversal and Remittitur.

This cause having been duly submitted at the February Term, 1918, of this Court by the attorneys of the respective parties, and the Court having considered the same and finding error in the record and proceedings in the District Court of Perth Amboy.

It is thereupon ordered that the judgment of the District Court of Perth Amboy removed by appeal in this cause be reversed and a ne wtrial awarded, and the record remitted to the Court below to be proceeded with according to law and the practice of said Court.

Entered June 22, 1918, on motion of

LEO GOLDBERGER,
Atty. of Appellant.

Opinion of Supreme Court.

(Filed June 7, 1918.)

NEW JERSEY SUPREME COURT.
February Term, 1918.

S. MARTIN JACOBSEN,
Plaintiff and Appellant,

vs.

PETER A. PETERSON,
Defendant and Appellee.

Argued February 19, 1918; Decided June 7, 1918.
Syllabus.

1. It is the duty of an attorney, who is employed to investigate the title to real estate, *to make a painstaking* examination of the records, and to report all facts relating to the title. He is therefore liable for any injury that may result to his client from negligence in the performance of his duties, that is, from a failure to exercise ordinary care and skill in discovering in the records and reporting all the deeds, mortgages, judgments, etc., that affect the title in respect to which he is employed.

2. Where an attorney negligently omits to report the fact of a judgment, which is a lien upon real estate the title of which he was employed to investigate, and his client buys upon the faith of such report and without knowledge of such judgment, the measure of damages is the amount the client is caused to pay out to remove the lien of such judgment, and this is so even though the client subsequently sells the real estate for a sum in excess of its total cost to him including the discharge of the judgment.

Opinion of Supreme Court.

On appeal from the District Court of Perth Amboy.

Before Justices Swayze, Trenchard and Minturn.

Leo Goldberger, for the appellant.

Peter A. Peterson, *pro se.*

The opinion of the Court was delivered by Trenchard, J.

The plaintiff below sued the defendant, an attorney at law, to recover (1) damages sustained by reason of the negligence of the defendant in examining and reporting upon the title of lands, and (2) for moneys had and received for the use of the plaintiff.

The learned Trial Judge, sitting without a jury, found for the plaintiff, who now prosecutes this appeal. He finds no fault with the action of the judge in respect to the second item, but contends that he erred in awarding the plaintiff only six cents damages on account of the defendant's negligence in the investigation of the title of the land.

We are of the opinion that the contention is well founded.

It is the duty of an attorney, who is employed to investigate the title to real estate, to make a painstaking examination of the records, and to report all facts relating to the title. He is, therefore, liable for any injury that may result to his client from negligence in the performance of his duties, that is, from a failure to exercise ordinary care and skill in discovering in the records and reporting all the deeds, mortgages, judgments, etc., that affect the title in respect to which he is employed. *Economy B. & L. Assn.* vs. *West Jersey Title Co.*, 64 N. J. L. 27.

In the present case it appeared, and the trial judge properly found, that the defendant negligently overlooked and failed to report a judgment for $380 which was a lien upon the land the title

of which he was employed to examine, and which the plaintiff purchased in reliance upon the defendant's report and without knowledge of the existence of such judgment. There was, therefore, no question as to the defendant's liability.

The question arises, what was the measure of damages? Where, as here, an attorney negligently omits to report the fact of a judgment, which is lien upon real estate the title of which he was employed to investigate, and his client purchases such real estate in reliance upon such report and without knowledge of such judgment, the measure of damages is the amount his client is caused to pay out to remove the lien of such judgment.

But it appeared that the plaintiff subsequently sold the real estate for a sum in excess of its total cost to him including the discharge of the judgment, and the trial judge considered that this justified the award of nominal damages only. Not so. The measure of damages was not affected by the sale. *It will not do to say that in order for a client* to recover for such negligence he must *either* sell the property at a loss or not sell it at all. He was entitled to all the profit he would have made by the transaction if the title had been as represented.

The judgment below will be reversed and a new trial awarded.

State of the Case Settled by the District Court.

(Filed in Supreme Court January 7, 1918.)

DISTRICT COURT OF THE CITY OF PERTH AMBOY.

S. MARTIN JACOBSEN, Plaintiff, vs. PETER A. PETERSEN, Defendant.	On Contract On Appeal. State of the case settled by the Court.

LEO GOLDBERGER, attorney of plaintiff-appellant.
PETER A. PETERSEN, attorney *pro se* defendant-appellee.

The parties hereto, or their attorneys, having been unable to agree upon a state of the case on appeal and having applied to me, Judge of said Court, within the time limited by law, I do hereby settle the state of the case as follows:

The action was brought by the plaintiff against the defendant, who is a counselor at law of New Jersey, in an action to recover the sum of $176.77 moneys had and received by the defendant for the use of the plaintiff which the defendant had not accounted for, and $380 being the amount of a judgment which the plaintiff claimed that he was obliged to pay to release a piece of real estate which he had bought and owned from the lien of a judgment and for which the defendant was liable for said defendant's negligence in failing to report a judgment as the result of a search that the defendant had made for the plaintiff at his request. The excess over the sum of $500 was waived. The de-

fendant filed a setoff claiming that he had accounted for all the moneys that he had received and was entitled to a balance due to him from the said plaintiff of the sum of $6.93. The case was tried before me without a jury.

On the trial of the case it appeared that the dispute between the parties over the moneys collected arose over their failure to agree on certain collection fees which the defendant claimed and to which I find that he was entitled. The defendant's setoff of $6.93 was overcome by a further amount of $7.70 which the plaintiff claimed at the trial, but which was not embraced in the amount he claimed in his state of demand, which amount I allowed over the defendant's objection leaving an indebtedness of the defendant to the plaintiff on this count of $0.77. Concerning the judgment, the plaintiff testified that desiring to obtain title to a piece of real estate which was subject, as he knew, to a building loan association mortgage for about $1600. and a further mortgage to him of some $360 he employed the defendant to make a search of the title to the premises in question and that in the making of such search the defendant overlooked the judgment which was a lien upon the real estate and that he failed to report the existence of such judgment to the plaintiff for which services he paid the defendant the sum of $50. That after having sold the premises in question and parting with the title the fact of the existence of the judgment was brought to his attention and that he was obliged to pay it, and that the amount he was obliged to pay to procure a satisfaction of the judgment was the sum of $380. Check for $380 offered in evidence and marked Exhibit P-1. The plaintiff admitted that after purchasing the property he had succeeded in procuring another mortgage loan of a sufficient amount to discharge the building loan

mortgage and at that time the existence of the judgment had not been discovered. That he is also sold the premises to a purchaser and that at that time no mention was made of the judgment. He also testified that when he sold the property he received a sum sufficient to cover all his outlay by reason of the judgment and was still $40 to the good on the transaction. The admission of this testimony was objected to by the plaintiff and allowed by me over his objection.

Defendant at the close of the case moved for a judgment in his favor for $6.93. This motion I denied. The defendant moved for a judgmnet of nonsuit as the plaintiff has shown no loss and was entitled to no damage. This motion I denied. An exception was taken to both of my rulings.

The plaintiff moved for judgment for the amount shown to be due on the first count and for the amount of the judgment which had been paid. This motion I denied and granted the plaintiff an exception.

I found that the defendant was indebted to the plaintiff in the sum of $0.77 on the first count, and he was guilty of negligence as alleged in the second count but that the plaintiff had not proved any loss by defendant's negligence and was entitled to nominal damages only and assessed the damages of the plaintiff on the second count at $0.06. Judgment was entered in favor of the plaintiff and against the defendant for the sum of $0.83.

Case signed and settled by me this 27th day of December, 1917.

CHARLES C. HOMMANN,
Judge.

EXHIBITS OF DEFENDANT-APPELLANT.

Exhibit D-1—Deed of March 23d, 1909 for property from Agnes S. Winant and H. Eugene Winant her husband to George Christofferson.

Exhibit D-2—Authorization of George Christofferson of January 5th, 1911 to Peter A. Peterson.

New Jersey Court of Errors and Appeals

S. MARTIN JACOBSEN,
Plaintiff-Appellee,

VS

PETER A. PETERSON,
Defendant-Appellant.

CONTRACT
APPEAL FROM
SUPREME COURT

Brief of Plaintiff-Appellee

LEO GOLDBERGER, of Counsel
with Plaintiff-Appellee

175 Smith Street,
Perth Amboy, N. J.

New Jersey Court of Errors and Appeals

S. MARTIN JACOBSEN, *Plaintiff-Appellee,* VS PETER A. PETERSON, *Defendant-Appellant.*	ON APPEAL FROM SUPREME COURT BRIEF OF APPELLEE.

FACTS

The facts are more properly and correctly set forth in the state of the case settled by the trial court (Statement of Case pp. 10).

ARGUMENT

1. The duty of an abstractor to his client is to MAKE A PAINSTAKING EXAMINATION OF THE RECORD, AND TO SET FORTH IN THE ABSTRACT ALL THE FACTS RELATING TO THE TITLE.

He is therefore liable for any injury that may result from negligence in the performance of his duties; that is, from a failure to exercise ordinary care and skill in discovering in the records and

noting in the abstract all the deeds, mortgages, judgments &c., that affect the title in respect to which he is employed.

1 R. C. L. 92 sec. 4.
Marange vs. Mix 44 N. Y. 315.
Economy B. L. vs. West Jersey Title Co., 64 N. J. L. 27 1 Cor. Jur. 371.

2. WHERE AN ENCUMBRANCE IS OVERLOOKED, THE MEASURE OF DAMAGES IS THE COST OF PAYING OFF OR REMOVING THE ENCUMBRANCE.

70 Ill. 268.
133 Pac. 119.
102 S. W. 901.

3. Where a purchaser buys a fee and receives a life estate and part fee, the attorney reporting the property as being owned in fee is liable for the damages between the value of the fee which his client should have received and the value of what he actually received.

Kenthan vs. St. Louis Trust Co., 101 Mo. Appl., 73 S. W. 334.

The plaintiff respectfully submits that the sale of the property by the plaintiff at an advance over the original cost cannot be taken advantage of by the defendant. If the property had not been sold the attorney would have been liable, and the mere fact that it was sold does not relieve the attorney.

The plaintiff was entitled to ALL THE PROFITS he would have made if the title had been

as represented. Can it be said that in order for a client to recover, he must either sell the property at a loss or not sell it at all?

4. The law on the subject matter down to date will be found in

12 L. R. A. (N. S.) 449.
42 L. R. A. (N. S.) 176.
1916 D. L. R. A. 820 to 828.
26 L. R. A. (N. S.) 1207.

5. It is respectfully urged that the decision of the Supreme Court be affirmed.

LEO GOLDBERGER,

Of Counsel with Plaintiff-Appellee.

New Jersey

Court of Errors and Appeals

S. Martin Jacobsen, Plaintiff-Appellee, vs. Peter A. Peterson, Defendant-Appellant.	*On Contract.* *On Appeal from Supreme Court.* *Brief of Defendant-Appellant.*

Brief Statement of Facts.

This is an appeal from New Jersey Supreme Court reversing a judgment rendered by the District Court of Perth Amboy (Printed pp. 5 and 6). The plaintiff appellee sued the defendaant-appellant, a Counsellor-at-Law, to recover damages sustained by reason of defendant's negligence in examining title to certain real estate. (Printed pp. 7 and 9.) The trial judge found for the plaintiff awarding him six cents damages. (Printed pp. 8 and 11.) The learned trial judge found that the defendant-appellant had negligently overlooked a judgment of $380.00, which was a lien upon the premises in question. It was also shown at the trial that the plaintiff-appellee subsequently sold the property for a sum in excess of its total cost to him including the discharge of the judgment, and the trial judge considered that this justified the award of nominal damages only. (Printed pp. 8 and 11.) The Supreme Court reversed the judgment of the District Court and awarded a new trial

on the ground that the plaintiff-appellee was entitled to all the profits he would have made by the transaction if the title had been as represented. (Printed p. 8.)

Special Grounds of Appeal.

1. The plaintiff-appellee failed to show any damages by reason of the alleged negligence of the defendant-appellant.

2. The evidence shows that the plaintiff-appellee gained by reason of the alleged negligence of defendant-appellant.

3. An attorney-at-law is only liable to his client for the actual damages sustained by reason of his negligence.

4. It is the duty of an injured party on whom a legal wrong has been perpetrated to use all reasonable means to arrest the loss and to mitigate the injury according to the opportunities that may fairly be or appear to be within his reach.

5. If the plaintiff-appellee could have arrested the loss and mitigated the damages by a sale of the property it was his duty to do so.

6. All legal damage, whether general or special, must naturally and proximately result from the act or default complained of.

7. Damages not connected directly with the breach of duty and such as cannot be said to have entered into the contemplation of the parties at the time of the wrongful act are remote and should be denied.

8. The elementary rule for the measure of dam-

ages rests upon the principle of compensation to the party injured for the loss sustained, with the least burden to the party guilty of the breach consistent with the idea of fair compensation, and with the duty upon the party injured to exercise reasonable care to mitigate the injury, according to the opportunities that may fairly be or appear to be within his reach. That rule obtains to actions *ex delicto* as well as to actions *ex contractu.*

9. There was no evidence produced in the trial court to show that said plaintiff-appellee was legally compelled to pay said judgment. In fact, the evidence shows that he voluntarily paid same after full knowledge of all the facts.

Brief of the Argument.

That an attorney is liable for an injury that may result to his client from negligence in the performance of his duties is well settled. That doctrine needs no citation.

Suffice it to say that the defendant-appellant denied that he was ever engaged by the defendant-appellee to make the search in question; and, in support of that contention, he offered in evidence a certain written authorization of said George Christopherson tending to show that he acted only as broker for plaintiff-appellee for which service he received said $50.00. (Exhibit D-2, Printed p. 12.) However, the trial court found that the $50.00 were paid for the examination of the title to said property, notwithstandinfg that plaintiff failed to produce or prove any abstract.

The measure of damages in an action against an attorney for negligence is the amount of loss actually sustained.

1 C. J. 371.
4 Cyc 974.

Where the evidence shows, as in the case at bar, (Printed p. 11), that no damages have been sustained by the client, it would seem that he cannot recover anything, except nominal damages.

1 C. J. 371.
4 Cyc 975.

It is the duty of an injured party on whom a legal wrong has been perpetrated to use all reasonable means to arrest the loss and mitigate the injury according to the opportunities that may fairly be or appear to be within his reach. That principle has been annouced by this court.

Ramsey v. *Perth Amboy Shipbuilding, &c.*, 73 N. J. E. 742.

That rule applies as well to actions *ex contractu* as to actions *ex delicto.*

Ramsey v. *Perth Amboy Shipbuilding, supra.*

It was said by Vice-Chancellor Stevens in the case of *Ramsey* v. *Perth Amboy Shipbuilding, &c.*, 72 N. J. E. 167:

> "The point upon which receiver's counsel principally relied was that it was the duty of the government to have mitigated the loss—to have taken the partially-constructed boats and completed them."

It is said in Benj. Sales (4th Am. Ed.), 1327, that "in every case the buyer, to entitle him to recover the full amount of damages, must have acted throughout as a reasonable man of business, and done all in his power to mitigate the loss."

The Supreme Court of the United States (*Wicker*

v. *Hoppock,* 73 U. S. 94, and *Warren* v. *Stoddart,* 105 U. S. 224) lays down the rule as follows: "Where a party is entitled to the benefit of a contract and can save himself from a loss arising from a breach of it at a trifling expense or with reasonable exertions, it is his duty to do it, and he can charge the delinquents with such damages only as with reasonable endeavors and expense he could not prevent."

> "The rule applies as well to cases of contract as to cases of tort (Sedgw. Dam. 205), and may be variously illustrated. If A breaks down B's fence, and B does not repair until months afterwards in consequence of which cattle get in and destroy the next year's crop, B cannot sue for the loss of the crop, but only for the cost of repairing the fence. *Loker* v. *Damon,* 17 Pick. 284. If a servant be wrongfully discharged, it is incumbent upon him to seek other similar employment, and the amount earned or that might, with reasonable effort, have been earned will go in reduction of his damage. *Larkin* v. *Hecksher,* 51 N. J. Law (22 Vr.) 135.. If A and B enter into a contract, by the terms of which A is to give B possession of certain machines, which B is to sell for A on commission, and these machines are taken out of B's possession by C, who also tenders to B the right to sell them in a way equally remunerative to himself, B cannot recover from A the amount of commissions so agreed upon. *Beymer* v. *McBride,* 37 Iowa 114. If a common carrier agrees to transport A's oats within a certain time and fails to do so, and the oats become mouldy in the hands of A's agent after that time, when he might have preserved them from injury by stirring, A

> cannot recover for the depreciation in the value of the oats attributable to the failure to bestow necessary care. *Hamilton* v. *McPherson,* 28 N. Y. 72. If A agrees to make boilers for B, and after the work has been commenced, B notifies A that he rescinds the contract, it is A's duty, as soon as practicable, to stop the work. He can not thereafter go on to the injury of B. *Dillon* v. *Anderson,* 43 N. Y. 231.. In all these cases it was held that the plaintiff was bound to mitigate the loss by acting as an ordinary man of business would have acted The law, for wise reasons, to quote the words of Justice Seldon, in *Hamilton* v. *McPherson,* imposes upon a party subjected to injury the active duty of making reasonable exertions to render the injury as light as possible."

That case was affirmed by this court.

> *Ramsey* v. *Perth Amboy Shipbuilding, &c., supra.*

That principle of law has been approved elsewhere in a case similar to the case at bar.

> *Socket* v. *Rose,* 1916 D. L. R. A. 820.

In the case of *Socket* v. *Rose, supra,* the abstractor had also overlooked a judgment. The higher Court in that case (Page 824) said that, in such cases, it is also the duty of an injured party to endeavor to arrest the loss and mitigate the damages to render the injury as light as possible.

The cases hold that where a wrong has been done and the law gives a remedy, the compensation shall only be equal to the injury and the latter is the standard by which the former is to be measured.

The injured party is to be placed as near as may be in the situation which he would have occupied had not the wrong been committed.

Socket v. *Rose, supra.*

That principle seems to be entirely in conformity with justice. It can not justly be said that a plaintiff should be permitted to recover more than that which he has lost. If that were not so, the law of compensation could not apply. But we would then introduce a new principle of enrichment at the expense *of the* defendant, or permit an injured party to recover punitive damages in an ordinary action for negligence, etc.

The damages must be natural and proximate consequence of the wrongful act complained of and such as might reasonably be supposed to be a probable consequence thereof. It was so held by this Court.

Appleby v. *State,* 45 N. J. L. 167.
13 Cyc. 14 (note).

It is difficult to understand how the plaintiff-appellee has been injured by the negligence of the defendant-appellant, unless it can be shown that he could have bought the property cheaper had he known of the judgment and that that fact was made known to defendant-appellant. He introduced no evidence to prove that, nor did he allege it in his complaint. Only on that ground can it be said that the damages could have been foreseen by defendant at the time of the breach and have entered into the contemplation of the parties. That principle has been announced and approved by this Court.

Smith v. *Public Service, &c.,* 78 N. J. L. 480.
Wiley v. *West Jersey, &c.,* 15 Vr. 247.
Hughes v. *McDonough,* 43 N. J. L. 459.

The plaintiff-appellee does not claim vindictive or exemplary damages, therefore, he is only entitled to compensation for his loss. Any evidence which shows that he has sustained less injury than that claimed is admissible in mitigation of damage.

Ramsey v. *Perth Amboy Shipbuilding, &c., supra.*
Hopple v. *Higbee,* 23 N. J. L. 347.

The measure of damages in an action for failure to note on an abstract an encumbrance on the property is the amount which plaintiff was compelled to expend in removing the cloud.

1 Cyc. 218.

Of course, in such case it is assumed that damages are proven.

Damages cannot be recovered against an abstractor which the injured party, after knowledge of the facts, might reasonably have avoided.

1 C. J. 371.

Damages were not only avoided by plaintiff-appellee, but he gained by reason of the defendant-appellant's alleged breach of duty. (Printed P. 11.)

There can be no recovery against an examiner of title for failure to report a judgment lien against the property, where the judgment omitted is voluntarily paid and satisfied of record by the purchaser.

Roberts v. *Sterling,* 4 Mo. A. 593, appendix.
1 C. J. 369.

A purchaser of property on which there was an outstanding mortgage not reported has no right of action against the abstractor in respect to payment

on the mortgage voluntarily made by him after notice of the omission.

Brega v. *Dickey,* 16 Grant. Ch. (U. C.) 994.
1 C. J. 369.

The judgment in the case at bar was voluntarily paid by the plaintiff-appellee after he had received full knowledge that defendant-appellant had neglected to report same. (Printed P. 10.)

I, therefore, ask that the judgment of the Court below be reversed and that the judgment of the Perth Amboy District Court be affirmed.

PETER A. PETERSON,
Defendant-Appellant.