

New Jersey Court of Errors and Appeals.

EDMUND PARKER,

Plaintiff and Respondent,

VS.

WILLIAM T. HICKSON,

Defendant and Appellant.

*On Appeal from
the New Jersey
Supreme Court.*

10

BRIEF FOR APPELLEE.

The sole problem to be solved in this case is the following: When does the Statute of Limitations begin to run on a contract made by the vendor of real estate to hold himself "responsible for any structural defect that may be manifested within a reasonable time after the signing of this agreement?" 20

Counsel for both parties are agreed that the Statute begins to run immediately upon the accrual of the action. But as to the time when the action accrues, they disagree. Counsel for the plaintiff and respondent contends that the action accrues when the defect "is manifested." Counsel for the defendant and appellant insist that the action accrues as soon as a defect exists, without regard to its manifestation. 30

As the building was completed at the time the contract sued upon was entered into, it would seem that if there was any structural defect, it existed at that time, and hence the contract was broken immediately upon being made.

The rule of law is stated in

25 Cyc. page 1069

as follows:—

"Under the rule that an action for a breach of 40

contract may be begun before substantial damage has been sustained, a right of action accrues and the statute begins to run at the time the contract is broken, not at the time when actual damage results or is ascertained, nor does the subsequent accrual of additional damages resulting from the same breach afford a new cause of action so as to create a new period of limitation."

It is further stated on page 1091 that:

- 10 "Where unsound personal property is sold with a warranty of soundness, the warranty is broken as soon as made and the statute begins to run from the date of the sale, not from the time the buyer sustains consequential damage. Likewise, where goods are warranted to be of a certain kind or quality and are not of that kind, or quality, the warranty is broken when made, and the statutory period is computed from the date of the sale, not at the time when special or consequential damage results, or from the
- 20 date when the breach is discovered; and this although meanwhile the buyer is wholly unable to ascertain whether the goods comply with the warranty."

- From these statements of the law it is apparent that the accrual of the cause of action does not depend upon the manifestation of the defect, but upon its existence. As it is to protect the plaintiff against defects "of construction" that the agreement was made, these defects must have existed at the time
- 30 the contract was signed, and an action might have been brought at once. The fact that substantial damages might not have manifested themselves until some later date, would not affect the running of the statute.

The entire question of whether the statute of limitations commences to run at the time of breach of contract, or at the time actual damages are sustained in consequence thereof, is very fully discussed in a note in

- 40 15 L. R. A. (New Series) page 156, et seq.

pertinent portions of which are as follows:—

“It is conceded by practically all the authorities that in cases of breach of contract the statute of limitations begins to run against the right of the person damaged to recover, from the time of the breach, and not from the time actual damages are sustained in consequence thereof.

“A leading case on this subject is

Argall v. Bryant, 1 Sandf 98,

where the publishers of a newspaper negligently made an erroneous publication of a notice of the formation of a limited partnership, resulting, several years thereafter, in a heavy loss to one of the partners; and it was held, in an action against the publishers for the resulting damages, that the statute of limitations began to run at the time the error was committed, and not from the time it was discovered or the damages accrued. 10

“A case cited frequently in connection with the above case is

Bank of Utica v. Childs, 6 Cow. 238, 20

where a bank holding a note for collection, because of the failure of its notary to charge a prior indorser by giving notice of its non-payment, was compelled to answer in damages to the holders of the note; and it was held, in an action of assumpsit by the bank against the notary, that the cause of action arose immediately on the omission, and not at the time the bank was compelled to pay the damages.

“So in

Manning v. Perkins, 30

86 Me. 419, 29 Atl. 1114,

where an action was brought to recover damages resulting from the defendant's breach of an agreement whereby the plaintiff was to prosecute certain claims for him, the court said: “The statute of limitations commenced to run from the time when the cause of action accrued. That was at the time of the breach of agreement by the defendant. That moment the plaintiffs could have brought their action 40

against the defendant. More than nine years intervened before the commencement of this action. If the action rests on a breach of contract it accrues as soon as the contract is broken, although no injury results from the breach afterwards.’”

“To the same effect are

Everett v. O’Leary, 90 Minn. 154, 95 N. W. 901
(breach of contract to insure property against loss by fire) ;

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Crowley v. Johnston,
96 App. Div. 319, 89 N. Y. Supp. 258
(failure of attorney to record mortgage in consequence of which another mortgage obtained priority) ;

Campbell v. Culver,
56 App. Div. 591, 67 N. Y. Supp. 469
(real estate agent’s breach of contract in failing to pay taxes, whereby owner was compelled, subsequently, to redeem and recover the property) ;

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Compton v. Heissenbittel,
2 Misc. 340, 21 N. Y. Supp. 965, Reversing
1 Misc. 81, 20 N. Y. Supp. 402
(breach of agreement to pay the wharfage of chartered boat at the place of destination, to the owner or lessee of the wharf) ;

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Sinclair v. Bank of South Carolina,
2 Strobb. L. 344
(loss to indorsee of a note because of failure of bank with whom it had been left for collection properly to notify indorser of non-payment) ;

Bettley v. Faulkner, 3 Barn. & Ald. 288
(sale of winter wheat instead of spring wheat to plaintiff, who was compelled to answer in damages to his vendee) ;

Robertson v. Lovett, 11 N. S. 250)
(breach of contract in delivering an altered policy of marine insurance of plaintiff).”

“In

Rankin v. Woodworth, 3 Penr. & W. 48
40 it was held that the statute of limitations began to

run, so as to bar an action on a contract to complete a certain work, from the time when the work was to have been completed, and not from the time when the plaintiff had received actual damage from the imperfect execution of the work."

"The question as to whether the statute of limitations begins to run at the time of the breach of the contract, or at the time the actual damages are sustained, arises frequently in connection with the services of abstracters or examiners of title; and it has been universally held that the right of action against an abstracter or examiner of titles for making an incorrect report or abstract of titles accrues when the examination of the title is reported or the abstract delivered; and the statute of limitations runs from that time, and not from the time the damages accrue. 10

"A well-considered, and probably the leading case on this phase of the question, is

Russell & Co. v. Polk County Abstract Co.

87 Iowa, 233, 43 Am. St. Rep. 381, 54 N. W. 212, 20
 where, after holding that an action brought by the purchaser of a mortgage for damages sustained in having to pay a prior judgment lien because of a defective abstract furnished by the defendant was an action on the contract, and not for tort, the court held that the statute of limitations begins to run against the right to sue an abstract maker for errors in the abstract made by him, from the time the abstract is furnished, and not from the time the damage occurs. In this case, although there was a 30
 statute providing that in an action for relief on the ground of fraud or mistake the cause of action shall not be deemed to have accrued until fraud or mistake has been discovered, the petition was without allegation bringing the case within its provisions; and hence the court could inquire only when the cause of action accrued, without reference to its being grounded on fraud or mistake."

"The principle applying to abstracters and examiners of titles as above stated is also well illustrated 40

in cases involving breaches of professional duty, or malpractice, by physicians and surgeons.

“Thus in

Coady v. Reins, 1 Mont. 424,

where the gist of the action was the negligence and unskillfulness of a physician in treating a fractured arm, and not the injury or damage consequent thereon, it was held that the statute of limitations began to run immediately from the time of the setting of
10 the arm.”

“In

Miller v. Ryerson, 22 Ont. Rep. 369,

where, more than three years after the malpractice of a physician, who was a registered member of a certain college of physicians and surgeons, a child became permanently deaf and dumb, it was held that within a statute to the effect that such physicians should not be liable to any action for malpractice unless commenced within one year from the date of the
20 termination of the professional services, an action against the physician for the alleged malpractice was barred within one year from the time the services were rendered; and the statute of limitations began to run from that time, and not from the time the defects of the treatment developed.”

“Where unsound articles are sold with a warranty of soundness, or where goods are warranted to be of certain kind or quality and they are not of that kind
30 or quality, the warranty is broken as soon as made; and the statute of limitations commences to run against an action for the breach thereof from that time, and not from the time when the buyer sustains consequential damages.

“Thus, in

Baucum v. Streater, 50 N. C. (5 Jones, L.) 70,

it was held that the statute of limitations to an action for the breach of a warranty of the soundness of a slave began to run from the date of the contract,
40 and not from the time when the plaintiff himself was

held liable for breach of warranty to a third party to whom he had sold the slave."

What is this contract, if not a simple contract of warranty? Stripped of unnecessary verbiage, it is as follows: "I, guarantee that the building has been erected in a workmanlike manner and of substantial material, and that I hold myself responsible for any structural defect." What defect? "Any structural defect that may be manifested within a reasonable time." In other words, 10
 "If the building is not as I say it is, I will make good the defects." The very meaning of the word "defect" in connection with the context means the result of a condition that must have existed at the time the building was erected, and as a result of the manner in which it was erected, otherwise it would not be such a defect as the appellant guaranteed against.

The error of the Supreme Court is contained in the following extract from its opinion: "Here the contract contemplated that at a period future to its date 20
 something might make itself manifest that was not so at the time of the signing of the agreement, and it was against this future something that the guarantor expressly warranted." It is respectfully urged that it was against the present something—which might manifest itself in the future—that the appellant warranted. In effect, the appellant says: "There is nothing wrong with the building, but if there is it will show itself in a reasonable time, and I will make it good." Taking the agreement as a 30
 whole, the defect to be within the appellant's warranty must have arisen from the fact that the building was not erected "in a workmanlike manner and of substantial material."

The Supreme Court says: "This completely negatives the notion that the parties were dealing only with existing unmanifested defects. Some of the defects enumerated in the state of demand were or may have been of this nature, *e. g.*, the spreading of 40

the trimmer beam, the falling of the floor of the hearth and the settling of the bathroom." It is respectfully insisted that it is exactly "with existing unmanifested defects" that the parties were dealing. The trimmer beam would not spread, the floor of the hearth would not fall, and the bathroom would not settle unless, through unworkmanlike erection or poor material, the erection of the building had not been accomplished in a proper manner. Unless the
10 defects, though unmanifested, existed at the time this guaranty was signed, they would not be "structural" defects, due to improper workmanship or poor materials, and they would not therefore be covered by the appellant's guaranty.

From the above authorities and the reasons upon which they are founded, appellee contends that the contract was broken as soon as made, that the Statute of Limitations began to run at that time, and that this cause of action was therefore barred,
20 and the decision of the lower court was correct, and should be affirmed, and the decision of the Supreme Court reversed. The contract was dated March 10, 1908, and the summons was issued May 27, 1915, more than seven years afterwards. The action is therefore barred.

HOWE & DAVIS,
Attorneys for Defendant and Appellant.

New Jersey Court of Errors and Appeals

EDMUND PARKER,

Plaintiff-Respondent,

vs.

WILLIAM T. HICKSON,

Defendant-Appellant.

*On Appeal
from the
New Jersey
Supreme
Court.*

Brief for Plaintiff-Respondent

The only question involved in this cause is whether the Supreme Court was in error, in reversing the judgment of non-suit entered in the District Court of the First Judicial District.

The District Court allowed no testimony to be introduced, but gave judgment on the pleadings, on the theory that the contract set up in the State of Demand was barred by the Statute of Limitations. The contract in question (Case, page 8) reads as follows:

“East Orange, N. J., March 10, 1908.

I, William T. Hickson, guarantee that the building known as No. 237 Burnett Street, East Orange, County of Essex, New Jersey, has been erected in a workmanlike manner and of substantial material and I hold myself responsible for any structural defect that may be manifested within a reasonable time after the signing of this agreement. No provision contained in any instrument hereafter executed shall invalidate this guarantee as between said William T. Hickson and Edmund Parker.

WILLIAM T. HICKSON.

Witness:

IRA M. TAYLOR.

Point I.

IF THE CONTRACT IS TO BE PERFORMED ON THE HAPPENING OF SOME FUTURE EVENT, THE TIME OF WHICH CANNOT BE DETERMINED, IN ADVANCE, LIMITATION DOES NOT BEGIN UNTIL THE HAPPENING OF SUCH EVENT.

The rule governing statutes similar to the one under consideration is laid down in 25 Cyc., p. 1066, wherein it is said:

“The accrual of a cause of action means the right to institute and maintain a suit when and only when the aggrieved party has a right to apply to the proper tribunal for relief.

The true test therefore to determine when a cause of action has accrued is to ascertain the time when plaintiff could first have maintained his action to a successful result.”

In the case of *Richmans vs. Richmans*, 8 N. J. L., 55, the Court said: “It is not the date of the instrument that determines the remedy, but the time when the action accrues.” To the same effect are *Culver vs. Culver*, 31 N. J. L., 448. *Delaware Canal vs. Wright*, 21 N. J. L., 469, in this case the Court held that the limitation began to run from the time, only when the damage manifested itself as distinguished from the time when the cause of damage was created.

See also *Cunningham vs. Garford*, 68 N. J. L., 7.

In *Larson vs. Lambert*, 12 N. J. L., 248, it was held:

“By the accrual of the cause of action is to be understood the right to institute and maintain a suit whenever the party has a full and complete cause of action.”

Conclusion

The matter before this court may be distinguished from those cases wherein the Statute of Limitations begins to run from the date of the contract.

The wording of the instrument itself, makes it so, the contract says that the defect must "manifest" itself within a reasonable time *after* the signing of it. The accepted meaning of "manifest" is to make clear or apparent, this coupled with the fact that the manifestation must come *after* the signing of the agreement, makes it clear that the parties intended not only a defect, but a manifestation of it at a future time as a condition precedent to any action.

The question of a defect or kind of material used in this building is one purely of fact. The trial court refused to admit testimony, wholly ignoring that before it could determine whether or not the "*defect manifested* itself within a *reasonable* time," after the signing of this agreement, testimony would first have to be given, and then and not until then would the Statute of Limitation apply. Then its application would be to answer the question whether or not suit was brought within six years after a "reasonable time," this being the period mentioned in the agreement.

This is in keeping with the language of Mr. Justice Garrison speaking for the Supreme Court, when he said, "At what period after the signing of the contract, these defects became manifest is not in the case, since the non-suit was on the pleading and there is no presumption against the plaintiff. This is a matter of fact that calls for testimony, and whether such time was a reasonable time presents a question for a jury or for the court sitting as such."

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

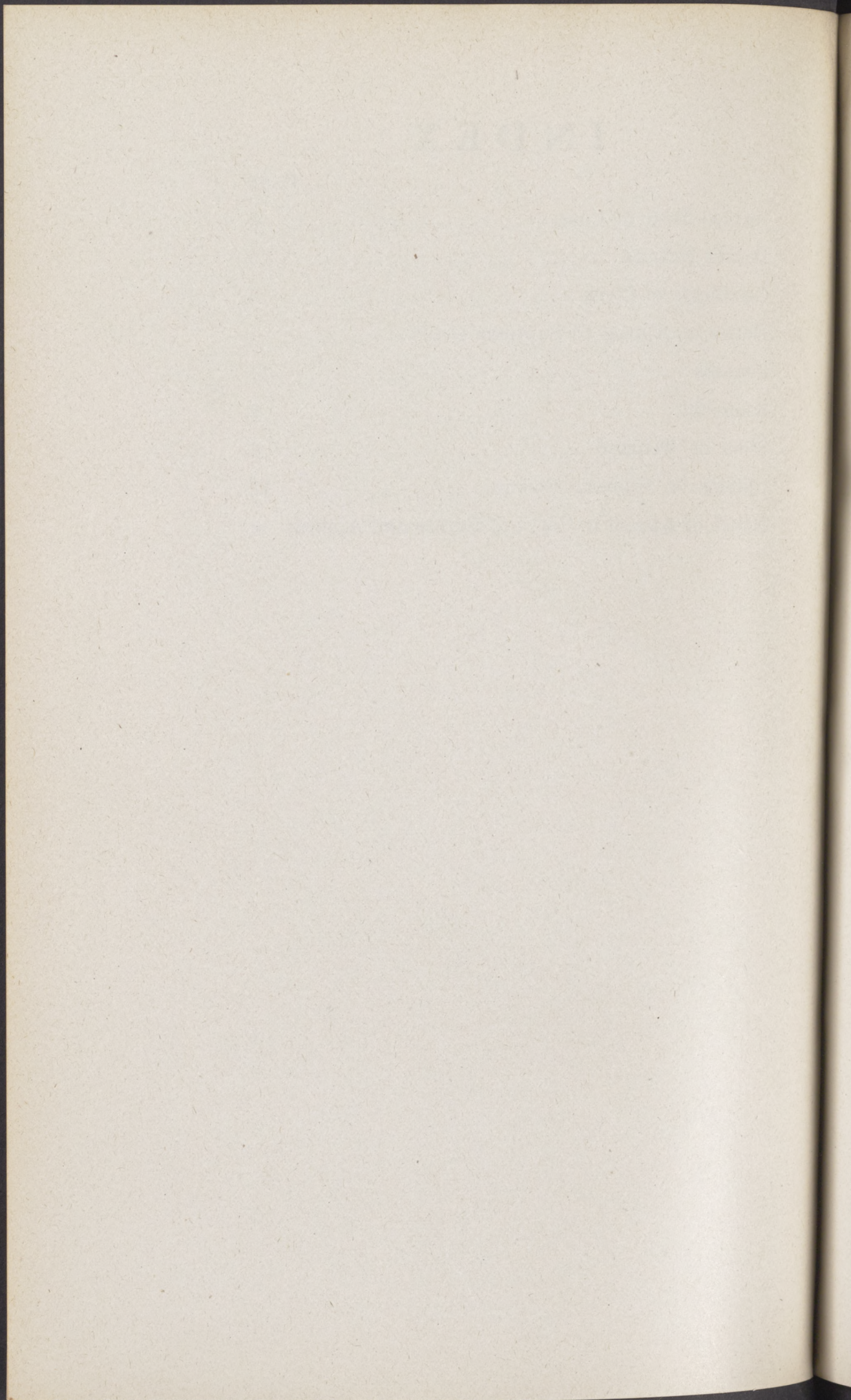
EDWIN C. CAFFREY,
Attorney for Plaintiff-Respondent.

THE UNIVERSITY OF CHICAGO

PHYSICS DEPARTMENT

INDEX

	PAGE
Agreed State of Case.....	8
Docket Entries.....	4
Certificate of Clerk.....	5
Notice of Appeal to Supreme Court.....	1
Reasons.....	11
Summons.....	2
State of Demand.....	6
Opinion of Supreme Court.....	12
Notice of Appeal to Court of Errors and Appeals	14



Notice of Appeal

Filed Sept. 25, 1915.

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

EDMUND PARKER,

Plaintiff,

VS.

WILLIAM T. HICKSON,

Defendant.

10

On Contract.

To Howe and Davis.

Sirs:

Take notice that the plaintiff, Edmund Parker, hereby appeals to the New Jersey Supreme Court from the judgment of the Montclair District Court rendered in the above stated action on the fifteenth day of September, nineteen hundred and fifteen.

20

EDWIN C. CAFFREY,
Attorney for Plaintiff.

Due service of said notice acknowledged by Howe & Davis, attorneys for defendant..

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40

Summons.
DISTRICT COURT.

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

10 (SEAL) To any Constable of said County,
 or to the Sergeant-at-Arms of the
 District Court of the First Judicial
District of the County of Essex. Summon William
T. Hickson to appear before the District Court of the
First Judicial District of the County of Essex, to be
held at the Council Chamber, No. 649 Bloomfield
Avenue (second floor), in the Town of Montclair, on
the ninth day of June, nineteen hundred and fifteen,
at ten o'clock in the forenoon, to answer unto Ed-
mund Parker, in an action upon contract wherein the
20 plaintiff demands from the defendant five hundred
dollars. Hereof fail not.

Witness, James P. Mylod, Esq., Judge of said
court at Montclair, as aforesaid, the twenty-seventh
day of May, in the year one thousand nine hundred
and fifteen.

JOSEPH F. MURPHY.
Clerk.

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DISTRICT COURT, FIRST JUDICIAL DISTRICT,
COUNTY OF ESSEX.

Summons on Contract.

EDMUND PARKER, <div style="text-align: right;"><i>Plaintiff,</i></div> <div style="text-align: center;">vs.</div> WILLIAM T. HICKSON, <div style="text-align: right;"><i>Defendant.</i></div>	}	10
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Demand	\$500.00
Costs	3.60
Mileage32
Attorney's fees.....	_____

Returnable June 9th, 1915.

EDWIN C. CAFFREY,
828 Broad Street, Newark, N. J. 20
Attorney for Plaintiff.

The summons was served and returned as follows:
I served the within summons June 4, 1915, on the
defendant by reading it to him and giving him a copy
thereof.

CHARLES REILLY,
Sergeant-at-Arms.

30

40

*Docket Entries.***Copy of Clerk's Docket.**

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

10	EDMUND PARKER, <div style="text-align: center;">vs.</div> WILLIAM T. HICKSON,	<i>Plaintiff,</i> <i>Defendant.</i>	}	<i>On Contract.</i>
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Summons	\$2.10
Mileage32
Listing fee.....	1.50

Edwin C. Caffrey, plaintiff's attorney.
Howe & Davis, defendant's attorney.

20 A summons in the above entitled cause was issued on May 27, 1915.

Returnable the 9th day of June, 1915, wherein the plaintiff demands of the defendant the sum of \$500.00.

The plaintiff filed a statement of demand May 27, 1915.

Summons was served and returned as follows:

I served the within summons June 4, 1915, on the defendant by reading it to him and giving him a copy thereof.

30

CHARLES REILLY,

Sergeant-at-Arms.

This cause was adjourned by the plaintiff to June 23, 1915, and from time to time thereafter until August 4th, 1915, and on motion by the defendant for non-suit decision was reserved.

Attorneys to file briefs.

40 Sept. 15, 1915. Judgment of non-suit entered in favor of the defendant and against the plaintiff.

Docket Entries.

Sept. 25, 1915. Notice of appeal acknowledgment thereon by defendant's attorney in appeal to the New Jersey Supreme Court filed.

Sept. 25, 1915. Bond on appeal Judge's approval thereon in appeal to the New Jersey's Supreme Court, filed.

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Certificate of Clerk.

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

EDMUND PARKER, <div style="text-align: right;"><i>Plaintiff,</i></div> <div style="text-align: center;">VS.</div> WILLIAM T. HICKSON, <div style="text-align: right;"><i>Defendant.</i></div>	}	<i>On Contract.</i> 20
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I, Joseph F. Murphy, Clerk of the District Court of the First Judicial District of Essex County, do hereby certify that the attached hereto are true copies of the summons and state of demand filed in this court in the above entitled cause and that the foregoing is a true transcript of the record and proceedings had herein.

30

(SEAL) JOSEPH F. MURPHY, Clerk.

40

State of Demand.

State of Demand.

Filed May 27, 1915.

MONTCLAIR DISTRICT COURT.

10	EDMUND PARKER, <div style="text-align: right; padding-right: 20px;"><i>Plaintiff,</i></div> <div style="text-align: center; padding: 0 10px;">vs.</div> WILLIAM T. HICKSON, <div style="text-align: right; padding-right: 20px;"><i>Defendant.</i></div>	}	<i>Action at Law.</i>
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Edmund Parker, residing at Orange, New Jersey, says that:

- 20 1. On the 10th day of March, 1908, he entered into an agreement with William T. Hickson for the purchase and sale of a certain house, No. 237 Burnett street, Orange, New Jersey.
2. That in consideration of his signing the said agreement the defendant signed another agreement, the following of which is a true copy:

East Orange, N. J., March 10, 1908.

30 I, William T. Hickson, guarantee that the building known as No. 237 Burnett street, East Orange, County of Essex, New Jersey, has been erected in a workmanlike manner and of substantial material, and that I hold myself responsible for any structural defect that may be manifested within a reasonable time after the signing of this agreement.

No provision contained in any instrument hereafter executed shall invalidate this guarantee as between said William T. Hickson and Edmund Parker.

WILLIAM T. HICKSON,

Witness:

40 Ira M. Taylor.

State of Demand.

3. The house mentioned in said agreement was not erected in a workmanlike manner and made of substantial material, and free from structural defects, but on the contrary, the headers and trimmers around the chimney on the first floor were not framed together and the floor beams were not bridged, and by reason of the absence of said bridging, the trimmer beam has spread, causing a pressure of the hearth arch thereby causing the hearth and surrounding floor to settle and fall. Also the support under bath-room was improperly placed, causing floor to settle and become uneven. 10

The house was further defective by reason of improper construction, that is to say, that the bridging of the cellar beams for the stairway had not been bridged in three sections.

4. That by reason of said structural defects and failure to use substantial material the plaintiff was in December, 1914, compelled to lay out the sum of one hundred (\$100.00) dollars. 20

Judgment will be claimed for one hundred (\$100.-00) dollars, together with costs of this suit.

EDWIN C. CAFFREY,

Attorney for Plaintiff.

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Agreed State of Case.

Agreed State of the Case for Appeal.

Filed Oct. 25, 1915.

DISTRICT COURT OF THE FIRST JUDICIAL
DISTRICT OF ESSEX COUNTY.

10

EDMUND PARKER,

Plaintiff,

vs.

WILLIAM T. HICKSON,

Defendant.

On Contract.

20

The parties hereto submit the following as the State of the Case for appeal.

This action was brought to recover damages for a breach of contracts as set forth in the following state of demand.

Edmund Parker, residing at Orange, New Jersey, says that:

30

1. On the 10th day of March, 1908, he entered into an agreement with William T. Hickson for the purchase and sale of a certain house, No. 237 Burnett street, Orange, New Jersey.

2. That in consideration of his signing the said agreement, the defendant signed another agreement, the following of which is a true copy:

East Orange, N. J., March 10, 1908.

40

I, William T. Hickson, guarantee that the building known as No. 237 Burnett street, East Orange, County of Essex, New Jersey, has been erected in a workmanlike manner and of substantial material, and that I hold myself responsible for any structural defect that may be mani-

Agreed State of Case.

fested within a reasonable time after the signing of this agreement.

No provision contained in any instrument hereafter executed shall invalidate this guarantee as between said William T. Hickson and Edmund Parker.

WILLIAM T. HICKSON,

10

Witness:

Ira M. Taylor.

3. The house mentioned in said agreement was not erected in a workmanlike manner and made of substantial material, and free from structural defects, but on the contrary, the headers and trimmers around the chimney on the first floor were not framed together and the floor beams were not bridged, and by reason of the absence of said bridging, the trimmer beam has spread, causing a pressure of the hearth arch thereby causing the hearth and surrounding floor to settle and fall. Also the support under bath-room was improperly placed, causing the floor to settle and become uneven.

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The house was further defective by reason of improper construction, that is to say, that the bridging of the cellar beams for the stairway had not been bridged in three sections.

30

4. That by reason of said structural defects and failure to use substantial material the plaintiff was in December, 1914, compelled to lay out the sum of one hundred (\$100.00) dollars.

Judgment will be claimed for one hundred dollars (\$100.00), together with costs of this suit.

EDWIN C. CAFFREY,

Attorney for Plaintiff.

40

Agreed State of Case.

The defendant made a motion for a non-suit on the ground that following Section I of the act entitled "Limitation," Volume 3, Compiled Statutes, page 3162, this action was barred because suit was not commenced within six years, from the date of the contract.

- 10 The court granted a motion of the defendant and entered a judgment of non-suit against the plaintiff. Exception to this was taken by the plaintiff.

EDWIN C. CAFFREY,

Attorney for Plaintiff.

HOWE & DAVIS,

Attorneys for Defendant.

20

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40

Reasons.

Filed Oct. 25, 1915.

NEW JERSEY SUPREME COURT.

EDMUND PARKER,

Plaintiff,

VS.

WILLIAM T. HICKSON,

Defendant.

*On Contract.
Appeal from
the District
Court of the
First
Judicial
District of
the County
of Essex.*

10

Edmund Parker appeals to the Supreme Court from the judgment of the District Court of the First Judicial District of Essex County, rendered in the above entitled cause for the following reasons: 20

1. The said District Court erred in granting a non-suit against the plaintiff on the ground that the cause of action was barred by the Statute of Limitations, Section I, page 3162, Vol. 3, Compiled Statutes.

2. The said District Court erred in holding that the Statute of Limitations began to run from the date of the contract as set up in the State of Demand, instead of from the time when the cause of action accrued, to wit, "From the time there is manifested some structural defect." 30

3. The said District Court erred in refusing to hear testimony on behalf of the plaintiff.

4. Because the judgment of said District Court is in other respects contrary to law.

EDWIN C. CAFFREY,
Attorney for Plaintiff.

40

Opinion of New Jersey Supreme Court.

NEW JERSEY SUPREME COURT

November Term, 1915

10	EDMUND PARKER,		WILLIAM T. HICKSON,
		vs.	
		Appellant,	Appellee.

}

Opinion

Submitted Dec. 17, 1915. Decided March 9, 1916.
 Before Justices Garrison, Trenchard and Black.
 On Appeal.

For the Appellant, Edwin C. Caffrey, Esq.
 For the Appellee, Howe & Davis, Esqs.

20 The opinion of the Court was delivered by GARRISON, J.

30 The plaintiff sued in the District Court for damages for a breach of a guaranty and was non-suited on his state of demand on the ground that his action, having been brought more than six years from the date of the contract sued upon, was barred by the statute of limitations. The precise question is, When does the Statute of Limitations begin to run on a contract made by the vendor of real estate to hold himself "responsible for any structural defect that may be manifested within a reasonable time after the signing of this agreement"?

Counsel for both parties are agreed that the Statute begins to run immediately upon the accrual of the action. But as to the time when the action accrues they disagree. Counsel for the plaintiff contends that the action accrues when the defect "is manifested." Counsel for the defendant and appellee insists that the action accrues as soon as a defect exists, without regard to its manifestation.

40 We think that the contention of the plaintiff is the correct one. The language of the contract takes it

out of that class of cases in which the statute runs from the date of the contract, the cause of action having then accrued although not manifest to the senses or known to exist. Here the contract contemplated that at a period future to its date something might make itself manifest that was not so at the time of the signing of the agreement, and it was against this future something that the guarantor expressly warranted. This completely negatives the notion that the parties were dealing only with existing unmanifested defects. Some of the defects enumerated in the state of demand were or may have been of this nature, *e. g.*, the spreading of the trimmer beam, the falling of the floor of the hearth and the settling of the bath room. At what period after the signing of the contract these defects became manifest is not in the case, since the non-suit was on the pleadings and there is no presumption against the plaintiff. This is a matter of fact that calls for testimony, and whether such time was a reasonable time presents a question for a jury or for the court sitting as such. It was error to non-suit on the pleadings.

The judgment is reversed.

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Notice of Appeal.
NEW JERSEY SUPREME COURT

EDMUND PARKER,
Plaintiff-Respondent,

VS.

WILLIAM T. HICKSON,
Defendant-Appellant.

}

*On Contract.
Notice of
Appeal.*

10

To Edwin C. Caffrey, Esq.,
Attorney of Plaintiff:—

Take notice that the defendant appeals to the New Jersey Court of Errors and Appeals from the judgment rendered in the New Jersey Supreme Court, in favor of the plaintiff and against the defendant, in the above stated cause, on March 9, 1916, upon the following grounds:—

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1. The New Jersey Supreme Court erred in reversing the judgment of the First Judicial District Court of the County of Essex.

2. The New Jersey Supreme Court erred in holding that the Statute of Limitations began to run from the time a structural defect was manifested.

3. The New Jersey Supreme Court erred in holding that an action arose when a structural defect was manifested.

4. The said Supreme Court should have held that the cause of action arose as soon as a structural defect existed.

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5. The Supreme Court in effect held that a structural defect could come into existence after the signing of the agreement.

6. The said Court held that the manifestation of a defect was synonymous with the accrual of the cause of action.

7. The Supreme Court should have held that the Statute of Limitations began to run from the execution of said agreement.

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HOWE & DAVIS,
Attorneys for Defendant-Appellant.

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