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Transcript of Pleadings for Trial.
New Jersey Supreme Court

PASSAIC COUNTY.

HENRY L. STAEHLIN, Plaintiff, vs. WARD SMITH and MRS. WARD SMITH, Defendants.	}	10
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PETER COHN,
Attorney for Plaintiff. 20
LEWIS VAN BLARCOM,
Attorney of Defendants.

(Summons issued May 18, 1931.)

Complaint.

Filed May 27, 1931.

Plaintiff residing in the City of Paterson, County of Passaic, and State of New Jersey, through his Attorney Peter Cohn, says that: 30

1. At the times hereinafter mentioned, plaintiff was and still is a duly licensed real estate broker of this State.

2. That on December 8th, 1930, and thereafter, the said defendants duly requested plaintiff to list,

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Complaint.

advertise and sell in their behalf, their farm representing the same to be and consist of one hundred and sixty-eight (168) acres, and agreed to pay plaintiff a brokerage fee of five (5%) per cent. of said selling price.

10 3. That in accordance with said authorization, plaintiff expended considerable time, effort and
moneys in listing, advertising and securing a prospective purchaser therefore, and as a result of
plaintiff's endeavors, one Irwin A. Todd was secured as a prospective purchaser for said farm,
and as a result of plaintiff's efforts an Agreement for Sale was actually entered into between defendants
and the said Irwin A. Todd, wherein defendants agreed to sell, and the said Irwin A. Todd
20 agreed to buy defendants' farm, consisting of one hundred and sixty-eight (168) acres, for the sum
of Ninety-four Hundred (\$9400.00) Dollars.

4. That said defendants further covenanted and agreed in said agreement to pay plaintiff his
standard rate of commission of five (5%) per cent. of the selling price, or a total of Four Hundred
and Seventy (\$470.00) Dollars.

30 5. That said defendants' farm did not comprise one hundred and sixty-eight (168) acres, nor an
acreage proximating that amount, but of a decidedly less acreage, to wit, approximately one hundred
and forty-six (146) acres, as a result of which the said defendants were unable to deliver to the said
Irwin A. Todd the acreage covenanted in their said agreement.

40 6. The said purchaser secured by plaintiff was ready, able and willing to purchase said farm on
the terms submitted and authorized by defendants,

Complaint.

and by reason of the aforesaid, defendants were and are indebted to plaintiff in the said sum of Four Hundred and Seventy (\$470.00) Dollars together with interest from May 1st, 1931, for which sum plaintiff hereby demands judgment, together with costs of court.

PETER COHN, 10
Attorney for Plaintiff.

Answer.

Filed June 12, 1931.

Defendants residing in the Township of Wantage, in the County of Sussex and State of New Jersey, answering say that:

20

FIRST DEFENSE:

1. Defendants have no knowledge or information sufficient to form a belief as to the matters alleged in paragraph 1 of the complaint.

2. Defendants deny paragraph 2 of the complaint.

3. Defendants deny that any binding agreement was entered into between the defendants and one, Irvin A. Todd, as alleged in paragraph 3 of the complaint and further say that any agreement made was without consideration and void and that the said Irvin A. Todd failed to pay to defendants the consideration or any part thereof as provided for in said alleged agreement. 30

4. Defendants deny that said alleged agreement specified that they should pay five per cent. of the selling price to the said plaintiff. 40

Answer.

5. Defendants deny any binding agreement whereby they agreed to deliver to the said Irvin A. Todd the property mentioned in the complaint.

6. Defendants deny that said alleged purchaser was ready, able and willing to purchase said farm and that no binding agreement was entered into with him for the purchase of said property and that any agreement made between the said defendants and the said Irvin A. Todd was void and of no effect and that said Irvin A. Todd failed to pay any consideration as provided for in said agreement.

SECOND DEFENSE:

1. Defendants repeat the matters contained in the First Defense and further answering say that said action is brought prematurely, that if any agreement was made no commissions were to be paid to the said plaintiff until delivery of the deed, that no deed has been delivered.

THIRD DEFENSE:

1. These defendants admit that they signed a paper purporting to be an agreement of sale made by and between these defendants and the said Irvin A. Todd. These defendants say that plaintiff had knowledge of said agreement and that said Irvin A. Todd failed to pay the consideration or any part thereof as provided for in said agreement and has never paid such consideration or taken title to the property; all of which was known to the plaintiff, and that no commissions were to be paid until the deed was delivered to the purchaser.

Answer.

FOURTH DEFENSE:

1. Defendants say that at the times alleged in the complaint by a Statute enacted by the Legislature of the State of New Jersey, entitled, "An Act for the Prevention of Frauds and Perjuries," and the several supplements and amendments thereto, revision of 1877, as amended by Chapter 273, Laws of 1918, it was among other things enacted in words as follows: 10

"No broker or real estate agent selling or exchanging land for or on account of the owner shall be entitled to any commission for the sale or exchange of any real estate, unless the authority for selling or exchanging such land is in writing, and signed by the owner or his authorized agent, or the authority of the broker or real estate agent to make a sale or exchange of such land is recognized in a writing or memorandum signed by the owner or his authorized agent, whether or not such writing or memorandum is signed by said owner or agent before or after such sale or exchange has been effected, and the rate of commission on the dollar shall have been stated therein; provided however, that any broker or real estate agent who may hereafter be employed by any owner of real estate by oral agreement, to sell or exchange any real estate belonging to such owner, and who shall actually effect the sale or exchange of such real estate pursuant to such oral agreement, before the same shall have been terminated by such owner, in writing, as hereinafter provided, may recover from such owner the amount of commission on such sale or exchange, provided such broker or agent shall within five days after the making of such oral agreement serve upon such owner a notice, in writ- 20
30
40

Answer.

ing, setting forth the terms of such oral agreement and stating the rate or amount of commission to be paid thereunder, and provided said owner shall not have repudiated or terminated such agreement prior to the actual sale or exchange of said real estate; said owner shall have the right, at any time
10 after receiving such notice, to repudiate or terminate such oral agreement by serving upon such broker or agent a notice, in writing, to that effect, and upon the repudiation or termination of such agreement by the serving of such notices upon such agent or broker prior to the actual sale or exchange of such property by such agent, such agreement shall be null and void and no recovery of any commission shall be had thereunder, provided
20 however, that if any broker or agent shall have entered into negotiations with a prospective customer in good faith, under such agreement, for the sale or exchange of such property, and such negotiations shall be pending at the time of the repudiation or termination of such agreement by such owner, and such sale or exchange is subsequently consummated between such owner and such customer, such agent or broker shall be entitled to recover his commission on such sale or exchange,
30 notwithstanding the repudiation or termination of such agreement. The notice provided for herein shall be served either personally or by forwarding the same to the person to be served, by registered mail, to the last known post-office address of such person."

2. That plaintiff failed to comply with said Statute in that no written agreement was entered
40 into between the said plaintiff and defendants whereby they or either of them agreed to pay said

Answer.

plaintiff a commission for the sale of said property, or any agreement wherein it was stated the rate of commission on the dollar, nor that said plaintiff has served any notice upon said defendants as provided in said Statute.

FIFTH DEFENSE:

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The said Edith Smith, sued as Mrs. Ward Smith, answering separately says that:

1. She repeats the allegations contained in the previous defenses.

2. That she is the wife of Ward Smith; that said property mentioned in the complaint is owned by said Ward Smith and her as husband and wife in which they hold an estate in the entirety.

20

3. Defendant denies that she ever entered into any written agreement with said plaintiff for the sale of said property, or any agreement whereby she was to pay any commission, as alleged in the complaint.

4. Defendant denies that said plaintiff has complied with the terms of the Statute hereinbefore set forth.

5. Defendant denies that the agreement mentioned in the complaint is a binding agreement and that there was no consideration therefor.

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SIXTH DEFENSE:

1. Defendants deny all the allegations contained in the complaint.

LEWIS VAN BLARCOM,

Attorney for Defendants,

Newton, N. J.

40

Notice.

Entered July 16, 1931.

Application having been duly made by plaintiff to strike out the Answers heretofore filed by defendant, and for the entry of a summary judgment on the grounds that the matters therein contained are sham and untrue and filed merely for the purpose of delay and the court having duly heard the arguments of counsel and having duly considered the Briefs filed and being of the opinion that so much of the Answer as sets up a defense to the effect that the payment of commissions were not to be made until the delivery of the Deed, be and is hereby struck out; plaintiff's motion to strike out the entire Answer and for the entry of a summary judgment is hereby denied.

20

W. B. MACKAY,
*S. C. C.*On motion of
PETER COHN.

30

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Reply.

Filed September 16, 1931.

Plaintiff, replying to the Answer heretofore filed by the said defendants says that:

He denies all the matters set forth in said Answer excepting that portion of the same that was heretofore struck out by order of Judge Mackay, and expressly gives notice of his intentions to renew the Motion heretofore made by him at or before the time for the trial of this cause, for an Order striking out the said Answer on the grounds that the same is sham and untrue and filed merely for the purpose of delay, and for a summary judgment. 10

PETER COHN,
Attorney for Plaintiff. 20

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Postea.

Filed December 5, 1931.

NEW JERSEY SUPREME COURT.

PASSAIC COUNTY.

10

HENRY L. STAEHLIN,
Plaintiff,

vs.

WARD SMITH and MRS. WARD
SMITH,
Defendants.

} Postea.

20

This action came regularly on for trial on the first day of December, 1931, before Judge William B. Mackay at the Passaic Circuit; and the plaintiff having submitted his evidence, and the court, being of opinion that it was not sufficient to entitle him to recover, ordered judgment of non-suit to be entered against him.

30

Whereupon it is adjudged that the complaint of the plaintiff be dismissed, and that the defendants, Ward Smith and Edith Smith, recover of the plaintiff, Henry L. Staehlin, their costs, which are taxed at

W. B. MACKAY,
J.

Judgment entered December 5th, 1931.

40

Notice of Appeal.

Filed January 7, 1932.

NEW JERSEY SUPREME COURT.

PASSAIC COUNTY.

HENRY L. STAEHLIN,
Plaintiff,

vs.

WARD SMITH and MRS. WARD
SMITH,
Defendants.

10

} Notice of
} Appeal.

To: LEWIS VAN BLARCOM, ESQUIRE,
Attorney for Defendant.

20

Sir:

Please Take Notice that the plaintiff in the above stated cause appeals from the whole of the judgment of non-suit entered therein in the New Jersey Supreme Court and every part thereof to the New Jersey Court of Errors and Appeals, the last resort in all causes.

PETER COHN,
Attorney for Plaintiff. 30

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Grounds of Appeal.

Filed January 9, 1932.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

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HENRY L. STAEHLIN,
Plaintiff-Appellant,

vs.

WARD SMITH and MRS. WARD
SMITH,
Defendants-Appellees.} Grounds of
} Appeal.

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To: LEWIS VAN BLARCOM, ESQUIRE,
Attorney for Defendants-Appellees.

The following are the Grounds for Appeal:

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1. The trial court committed error in directing a non-suit against the plaintiff and in favor of the defendants.

2. The trial court committed error in refusing to deny the application for a non-suit made by the defendants.

3. The trial court committed error when it refused to admit in evidence a paper marked "P-3" for identification which was the Farm Listing Blank issued by the plaintiff and which was legal and competent proof of the rate of commission required to be in writing under the Statute of Frauds.

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4. The trial court committed error in denying the admission into evidence a paper marked P-3 for identification which by reference to the writ-

Grounds of Appeal.

ten contract marked Exhibit P-2 formed part of said written contract.

5. The trial court committed error when it refused to receive in evidence, a paper marked P-3 for identification which by reference formed part of a paper already in evidence and marked Exhibit P-2. 10

6. The court erred in sustaining the objection to the following questions:

“By Mr. Kohlreiter: Mr. Staehlin is this one of the listing blanks (referring to P-3 for identification) as is issued by your agency wherein the rate of commission to be paid for your services is stated?

Answer: It is.

By Mr. Van Blarcom: I object to that if the Court please. 20

The Court: I will sustain the objection.

Mr. Kohlreiter: Allow me an exception.”

7. The Court erred in sustaining the objection to the following question:

“By Mr. Kohlreiter: Did you have any talk at that time regarding the farm listing blank which is referred to in this contract? Yes or no. (Referring to Exhibit P-2 in evidence) 30

By Mr. Van Blarcom: I object to that if the Court please—

The Court: Yes or no.

Answer: Yes—

Question: Yes. Now what conversation did you have regarding this farm listing blank? 40

Grounds of Appeal.

Mr. Van Blarcom: I object to that.

The Court: Regarding which farm listing blank?

Mr. Kohlreiter: Regarding the farm listing blank referred to in Exhibit P-2.

10 Mr. Van Blarcom: I object to that because there has been no connection.

Mr. Kohlreiter: The particular blank referred to in Exhibit P-2 irrespective of which one it may be, sir.

Mr. Van Blarcom: I object to that.

The Court: I will sustain the objection.

Mr. Kohlreiter: The Court will allow me an exception."

20 8. The Court erred in sustaining the objection to the following question:

"Q. Question by Mr. Kohlreiter: I show you Exhibit P-3 for identification and ask you whether or not that is the listing blank referred to.

Mr. Van Blarcom: I object to that.

The Court: Sustain it.

Mr. Kohlreiter: The Court will allow me an exception."

30 9. The Court erred in sustaining the objection to the following question:

"Question by Mr. Kohlreiter: Was there any conversation at the time that agreement was signed regarding the farm listing blank and the rate of commission? Yes or no.

Answer: Yes, sir.

Question: What was that conversation?

40 Mr. Van Blarcom: I object to that if the Court please.

Grounds of Appeal.

The Court: Sustain it.

Mr. Kohlreiter: The Court will allow me an exception."

10. The Court erred in striking out the Answer to the following question:

"Question by Mr. Kohlreiter: Referring to the contract wherein the farm listing blanks as issued by your agency stating the rate of commission to be paid—will you tell the Court whether or not this is or is not the farm listing blank referred to in this contract (referring to P-3 for identification). 10

Mr. Van Blarcom: I object to that if the Court please.

Answer: That is the one.

The Court: Strike it out. 20

Mr. Kohlreiter: The Court will allow me an exception."

PETER COHN,
Attorney for Plaintiff-Appellant.

30

40

Testimony.

NEW JERSEY SUPREME COURT.

PASSAIC CIRCUIT.

10

HENRY L. STAEHLIN,
Plaintiff,

vs.

WARD SMITH and MRS. WARD
SMITH,
Defendants.

At Law.

20

Paterson, N. J.,
December 1, 1931.

Before—HON. WILLIAM B. MACKAY, Judge
and a Jury.

APPEARANCES:

For the Plaintiff: PETER COHN, ESQ., by
LEON KOHLREITER, ESQ.

For the Defendants: LEWIS VAN BLAR-
COM, ESQ.

30

(A jury was called and sworn and coun-
sel the respective parties opened the case
to the jury).

HENRY L. STAEHLIN, sworn.

Direct-examination by Mr. Kohreiter:

40 Q. Mr. Staehlin, you are the plaintiff in this
suit? A. Yes, sir.

Henry L. Staehlin—Direct.

Q. And you are engaged in business where? A. 275 Madison Avenue, Paterson.

Q. Talk out good and loud so the jury can hear everything you say. A. 275 Madison Avenue, Paterson.

Q. How long have you been engaged in the real estate business, Mr. Staehlin? A. About four or five years. 10

Q. Do you specialize in any particular type of real estate? A. Selling of farms, farm land.

Q. How long have you been engaged in that business? A. Oh, I should say the greater part of the time that I have been in the real estate line.

Q. Now, do you recall getting any communication from the defendants, Ward Smith or Mrs. Ward Smith? A. Yes. 20

Q. I show you this letter and ask you whether or not you received that from Mr. Ward Smith (handing a paper to the witness). A. Yes, that is the letter.

Mr. Kohlreiter: I offer it in evidence, Mr. Van Blarcom.

Mr. Van Blarcom: Yes.

(Paper marked Exhibit P-1 in evidence).

(Mr. Kohlreiter read Exhibit P-1 to the jury as follows): 30

“I am taking this ad from the Sussex paper. I have a farm of 168 acres, all tillable except 30 acres of timber, all hard wood and never failing water and a chance for two big lakes, a fourteen-room house. I have thirty head of cattle to sell with or without. Price of farm \$9,000. Will set price on stock or appraise them, either way. You may send me listing blanks. Signed 40

Henry L. Staehlin—Direct.

Ward Smith, Sussex, New Jersey, R. F. D. No. 1.

P. S. I am only three miles from Sussex, on hard road, Wolf Pit Road."

By Mr. Kohlreiter:

10 Q. When you received that letter, Mr. Staehlin, what, if anything, did you do? A. I sent him a listing blank, a listing form.

Q. And that listing form, is that an exact copy of what was sent to Mr. Smith? A. That is the exact copy.

Mr. Van Blarcom: I object to that being offered in evidence.

20 Q. In the listing blank that you forwarded, Mr. Smith, was there any mention made—

Mr. Van Blarcom: If the Court please, I object to that, whether he forwarded him a listing blank. He has got to show it was actually received. The mere fact of mailing is not sufficient.

Mr. Kohlreiter: I will call up on counsel to produce it. I see he has it there on the table.

30 (Mr. Van Blarcom handed a paper to Mr. Kohlreiter.)

Q. Is this the only copy of a listing blank that was sent to Mr. Smith (handing a paper to the witness)? A. No, sir.

By the Court:

40 Q. Is that the one you sent? Is that the one you sent? A. I had three forms of listing blanks, your Honor.

Henry L. Staehlin—Direct.

Q. I am asking you a question. Is that the one you sent, that white paper? A. I wouldn't want to swear to that.

By Mr. Van Blarcom :

Q. That is one of your blanks, is it not? A. Yes, it is. 10

Q. It came from your office? A. Oh, Mr. Jaeger also hands these out when he takes them around. This is a blank, and another blank form stating commission of five per cent that I always sent around.

Q. That is this, isn't it? A. That is a blank of mine. I have about a dozen different kinds.

By Mr. Kohlreiter :

Q. Do you know whether or not that was what you sent to him or was this the one you sent (indicating)? 20

The Court: Wait a minute. That is only a copy.

Mr. Kohlreiter: I beg your pardon?

The Court: You cannot prove the copy that way. You asked him to produce the original. Now, he has produced it.

Mr. Kohlreiter: That is right. I will offer that in evidence. 30

Mr. Van Blarcom: I object to offering the other in evidence.

Mr. Kohlreiter: I will withdraw the offer.

The Court: He is only offering this.

Mr. Kohlreiter: I have withdrawn the offer.

By Mr. Kohlreiter :

Q. Mr. Staehlin, after this blank was mailed, do 40

Henry L. Staehlin—Direct.

you know whether any other blanks were sent to or left with Mr. —

Mr. Van Blarcom: I object. He has not shown that it was mailed yet.

Mr. Kohlreiter: I will withdraw it.

10 Q. Do you know whether any blank like the one I hold in my hand was left with Mr. Smith? A. Why, yes.

Q. Who left that blank with Mr. Smith? A. Mr. Jaeger.

Mr. Van Blarcom: I move to have it stricken out, if the Court please.

The Court: Strike it out.

Q. Is Mr. Jaeger connected with you? A. Yes.

20 Q. In what capacity? A. He is associated with me in the selling of farms, and he handles the outside; he is always on the outside.

By the Court:

Q. You are on the inside, are you? A. Yes, sir.

By Mr. Kohlreiter:

Q. And did you or Mr. Jaeger procure a purchaser by the name of Irvin A. Todd for this farm?

30 A. We did.

Q. And was a contract drawn for the sale of this farm? A. It was.

Q. And did you draw that contract? A. I did.

Q. Is this a copy of the contract that was drawn (handing a paper to the witness)? A. Yes.

Mr. Kohlreiter: I offer that in evidence.

(The paper was marked Exhibit P-2 in evidence).

Henry L. Staehlin—Direct.

(Exhibit P-2, which was impounded with the Court and left in the custody of the stenographer, reads as follows) :

This Agreement made the 28th day of March in the year of our Lord One Thousand Nine Hundred and Thirty-one between Ward Smith and Edith Smith, his wife of the Township of Wantage in the County of Sussex and State of New Jersey party of the First Part; 10

And Irvin A. Todd, of the City of Paterson in the County of Passaic and State of New Jersey party of the Second Part;

Witnesseth, that the said party of the first part, for and in consideration of the sum of Nine Thousand Four Hundred Dollars \$(9,400.00) to be paid and satisfied as hereinafter mentioned, and also in consideration of the covenant and agreements hereinafter mentioned, made and entered into by the said party of the second part, doth agree to and with the said party of the second part, that they the said party of the first part, will well and sufficiently convey to the said party of the second part, his heirs and assigns, by Deed of Warranty free from all encumbrance except an existing First Mortgage of (\$4,000.) Four Thousand Dollars which is to remain. Said mortgage being held by, on or before the 27th day of April, 1931 next ensuing the date hereof, all that lot, tract, or parcel, of land and premises, hereinafter particularly described, situate, lying and being in the Township of Wantage in the County of Sussex and State of New Jersey: said property consisting of Farm Land of about One hundred and sixty-eight acres, together with a 14-room house, barn and any and all other outbuildings on premises. 20
30
40

Henry L. Staehlin—Direct.

Included in sale are the following items or personal effects: Two horses and harness; One (2-horse) wagon which was newly purchased last year; One (2-horse) Plow; One (1-horse) Plow; One John Deere Riding Cultivator; One Spring Tooth Harrow; All Hay and Manure; and One Holstein Cow to be chosen and given by Ward Smith; also one horse-cultivator. (All other personal property and household effects are to be retained by Ward Smith and are not included in sale).

10

The insurance premiums, taxes and interest on Mortgage shall be adjusted, apportioned and allowed as of the day of delivery of said deed.

20

And the said party of the second part for himself, his heirs, executors and administrators, doth covenant, promise and agree to and with the said party of the first part, his heirs, executors, administrators and assigns, that he, the said party of the second part, will pay and satisfy, or cause to be paid and satisfied, unto the said party of the first part, the said sum of Nine Thousand Four Hundred Dollars (\$9,400.00) as and for the purchase money of the foregoing described land and premises, in the following manner, that is to say:

30

On execution of this agreement for which this is also a receipt	\$ 200.00
On delivery of deed, cash	5200.00
On Bond and First Mortgage existing on property	4000.00
Total	\$9400.00

40

The party of the second part is to have the immediate right of possession of part of the house as has been agreed upon previously by interested parties until such time as closing of title is completed.

Henry L. Staehlin—Direct.

And the said party of the first part (Ward Smith) agrees to pay H. L. Staehlin, real estate broker of Paterson, N. J., his standard rate of commission on farm sales as stated in Farm listing blanks as issued by this agency, on the purchase price aforesaid, said commission to be paid in consideration of services rendered in consummating this sale, said commission to be paid upon delivery of deed. 10

And it is further Agreed, by the parties to these presents, that the said party of the second part, his heirs and assigns, may enter into and upon the said land and premises on the date that title changes or as agreed upon next ensuing the date hereof, and from thence take the rents, issues and profits to his and their use. 20

And it is further Agreed, by the parties hereto, that the said Deed of Warranty shall be delivered and received at the office of between the hours of in the noon and o'clock in the noon on or before the 27th day of April next ensuing the date hereof. 30

In Witness Whereof, the said parties have hereunto interchangeably set their hands and seals the day and year first above mentioned. 30

Signed, Sealed and Delivered in the presence of

WARD SMITH (L. S.)

MRS. WARD SMITH (L. S.)

IRVIN A. TODD (L. S.)

(155 Dundee Avenue,

Paterson, N. J.)

Geo. Elston,
(Witness).

Henry L. Staehlin—Direct.

By Mr. Kohlreiter:

Q. Now, Mr. Staehlin, is this paper your standard—

Mr. Van Blarcom: I object to that, if your Honor please.

10 Q. —blank that is referred to in this contract?
A. It is.

Mr. Van Blarcom: I object to the introduction any testimony of anything unless it is signed by this defendant.

The Court: What are you referring to? The contract?

By Mr. Kohlreiter:

20 Q. Is this the paper that you referred to?
Mr. Van Blarcom: I object to it.

Q. —as your blank in this contract? A. It is.

The Court: Why, no. No, they produced the original for you. He says it is one of his blanks.

Mr. Kohlreiter: Yes, but he doesn't say that is the one he sent him or that is the one that is referred to in this contract.

30 The Court: Why, counsel objected to you using a copy and then you said, "Well, I see he has it lying on the desk. I demand that he produce it." And he immediately handed it to you.

Mr. Kohlreiter: That is right, sir. Now, I ask the witness—

40 The Court: You took it and he said that one of his blanks, but he would not swear that that was the one he mailed to him. What difference does it make if this is the

Henry L. Staehlin—Direct.

standard blank if the other is his blank too?

Mr. Kohlreiter: I am asking him whether or not this is the blank referred to in that contract.

Mr. Van Blarcom: I object to that, if the Court please.

10

Mr. Kohlreiter: The contract states, "And the said party of the first part (Ward Smith) agrees to pay H. L. Staehlin, real estate broker of Paterson, N. J., his standard rate of commission on farm sales as stated in farm listing blanks as issued by this agency, on the purchase price aforesaid, said commission to be paid in consideration of services rendered in consummating this sale."

20

The Court: But that is not the point in this case. The point in this case is, you claim that he mailed a blank.

Mr. Kohlreiter: That is right.

The Court: In response to a letter. All right. Where is the blank? It must be either in the defendant's possession or destroyed.

Mr. Kohlreiter: No, no, if the Court please.

30

The Court: You produced a copy.

Mr. Kohlreiter: No, this is not a copy of what he has—

The Court: Is that what you mailed?

Mr. Kohlreiter: I don't know. But I say that this is what is referred to in the contract, irrespective of whether it was mailed to them or not.

40

Henry L. Staehlin—Direct.

The Court: How can you say so?

Mr. Kohlreiter: I am asking him.

The Court: There may be a thousand.

Mr. Kohlreiter: I am asking him whether this is the copy or this is the blank that is referred to in this contract.

10

The Court: That particular blank you hold in your hand?

Mr. Kohlreiter: That is right, sir.

The Court: Is it?

Mr. Van Blarcom: I object, if your Honor please.

The Witness: That is the one that is referred to.

The Court: That particular blank?

20

The Witness: Well, I don't mean that in the nature of the wording on it. The commission is worded on there, the commission is stated on that blank.

Mr. Van Blarcom: I object to that.

By Mr. Kohlreiter:

Q. Is this the blank that the commission has stated on that is referred to in this contract?

30

Mr. Van Blarcom: I object to that.

The Court: No, it is not, because he has already testified to something different. That is only a blank form that he may have held out, that never was in the possession of the defendant.

Mr. Kohlreiter: Well, if the Court please, irrespective of whether it was in the possession of the defendant or not, the contract states that we are to receive a commission in accordance with a listing blank—

40

Henry L. Staehlin—Direct.

The Court: I understand.

Mr. Kohlreiter: —as is issued by this company, H. L. Staehlin Company.

The Court: I understand.

Mr. Kohlreiter: All right. This is the blank which is issued and the witness says it is.

10

The Court: But that is not the way you have proceeded to try your case. You proceeded to try your case asking this man if that is a letter he received.

Mr. Kohlreiter: And he says he doesn't know whether he sent that copy which they have.

The Court: He couldn't just simply put in the contract, "in accordance with our listing blank." Suppose the listing blank said fifty per cent? Would he get it? Of course not.

20

Mr. Kohlreiter: Well, if that is the blank that was referred to at the time, he could. May I ask the question, for the purpose of the record?

By Mr. Kohlreiter:

Q. Mr. Staehlin, I show you this paper and I ask you whether or not that is the listing blank, or one of the listing blanks, of the type that is issued—

30

The Court: Well, get your question right.

Mr. Kohlreiter: I will withdraw it and reframe it, sir.

Q. Mr. Staehlin, is this one of the listing blanks as is issued by your agency, wherein the rate of commission to be paid for your services is stated?

40

A. It is.

Henry L. Staehlin—Direct.

Mr. Van Blarcom: I object to that, if the Court please.

The Court: I will sustain the objection.

Mr. Kohlreiter: Allow me an exception.

The Court: Don't note that answer.

10 Q. Have you received part of any commission from Mr. Smith or Mrs. Smith, the defendants in this case? A. No, sir.

Mr. Kohlreiter: Cross-examine.

Mr. Van Blarcom: No questions.

FRED JAEGER, sworn.

20 *Direct-examination by Mr. Kohlreiter:*

Q. Mr. Jaeger, do you recall going up to see Mr. and Mrs. Smith at their farm in Sussex A. Yes.

Q. Do you recall when that was, with regard to December 8? A. Yes, sir.

Q. How many days after December 8 did you go up to see them? A. Well, I couldn't just say how many days, because I am up there so often.
30 I am right up in that neighborhood all the time.

Q. When you said within three or four days? A. Three or four days.

Q. Now, at the time you went there did you leave anything with them? A. A listing blank.

Q. I show you this listing blank. Is this—

Mr. Van Blarcom: If the Court please, I will object to this.

40 Q. —the blank or a copy of the blank that you left with them?

Fred Jaeger—Direct.

The Court: No, is it the blank or a copy?
Now, which is it? Is it one or the other?

The Witness: I left this sort of a blank.

By the Court:

Q. Well, did you leave that one? A. Not this here particular one.

10

The Court: No.

By Mr. Kohlreiter:

Q. The blank that you left contained—just look at it—contained everything that is on this blank?

Mr. Van Blarcom: I object to that.

A. Made out just the same.

The Court: I will sustain it.

20

Mr. Kohlreiter: I will offer it for identification.

Mr. Van Blarcom: I object to it. The Court sustained the objection.

(Paper marked P-3 for identification reads as follows:

Exhibit "P-3" For Identification

(which is a paper made up of the following which is prepared by a system known as mimeographing).

30

FARM LISTING BLANK

Size, Acres..... Kind of Farm..... Price wanted Town County State
How near to Main Highway..... If on main highway, state amount of road frontage..... Answer as many of the following questions as possible:

Kind of house Age

Condition Rooms Bath

40

Fred Jaeger—Direct.

- No. Bedrooms Toilet (Inside or Out)
 Electric Gas
- Kind of Water In Kitchen or Outside
 How supplied
- Cellar Kind of Heat
- Kind of Roof
- 10 Does House need Paint
- Porches
- Shade Trees
- Describe any other improvements or extras on
 house Condition and Kind of road lead-
 ing to farm from nearest Highway
- No. Barns Kind
- Condition Size
- Mention if Modern, improvements such as, water,
 electric, number stanchions, kind of floor etc.
 20
- Do you produce Grade A Milk
- Have you a garage
- Describe all other Outbuildings, stating condi-
 tion
- Describe all Stock included in sale, kind and
 amount
- Do you include Tools and farming utensils
- Describe Farm machinery included
- 30 Milk prices How sold
- Mention approximate distance to the following
 points: Creamery R. R. Station
- Name of R. R. School Churches

- Name and distance to nearest Town or City
- Population of above
- Acres in cultivation
- Tillable Pasture
- 40 Woodland Orchards

Fred Jaeger—Direct.

- Kind
- What do you raise
- Describe whether you have a stream, brook or
springs on property
- Character of soil
- Sloping, rolling, level, etc.
- Is property fenced 10
- General Nationality of neighbors
- Nearest neighbor
- Nearest markets for poultry, produce, milk etc.
.
- How do prices average
- State here your rock-bottom sales price \$*
- Mortgages, 1st \$ 2nd \$
- Who holds mortgage
- Can it remain 20
- (Very important) State *Lowest Cash Down Pay-
ment* possible \$
- Property Taxes \$
- Have you any pictures of your property that you
can send
- If you will snap some and send later
- Would you care to exchange your property or ac-
cept a trade as part payment
- If so describe kind of property wanted
- Would you rent your property 30
- If so at what rental \$
- Give as good a reason as possible for selling
.
- Describe and include below any other information
that you think would help in the sale of your
property, use separate sheet of paper if necessary:
State best directions to reach property by auto,
naming nearest Main Highway:
- 40

Fred Jaeger—Direct.

ATTENTION FARM OWNERS

Please bear in mind the following advantages in listing your property with this firm:

THAT—I do not tie you or your property up through the use of any strong or binding contract.

10 I must produce or send an actual buyer to receive my commission, in other words earn it.

I give you full privilege of selling your property privately if you can, and in a case of this kind I do not ask nor expect a commission.

No definite time listing is requested, your property remains for sale on my files until sold, either through my efforts or by yourself.

20 If you wish you can withdraw the sale of your property by simply notifying me. A notice of about five days or more would be appreciated but is not necessary, although this would allow me time to cancel advertising or might prevent a prospective buyer from making an unnecessary trip.

In other words you have everything to gain and nothing to lose through listing your property with me. I am sure you will agree that my method of doing business is both fair and square.

IMPORTANT

30 Untruthful statements discourage a sale quicker than anything else. Be truthful and accurate in all your descriptions, it pays. State the lowest price you will accept. I do not handle properties that are over-valued by owners. Unless your property is reasonable priced or a bargain, I do not care to list it. I specialize in farm property and am constantly in touch with buyers that mean business, I do not care to waste their time. I ask
40 you to kindly be guided by above as it will save

Fred Jaeger—Direct.

time and expense to all concerned. Always state best directions to reach your property by auto from nearest highway. In many cases I send buyers with a card of introduction to you; show them your property; if they show interest ask them to leave a deposit. Then wire me C. O. D. I will then handle details of sale. At my first opportunity I will make a personal inspection of your property. 10

* * * *

Your signature to the following is requested, it merely guarantees my commission in the event I am successful in securing a buyer for your property at the sales price stated herein or as accepted by you.

Date:

20

It is agreed that H. L. Staehlin is to receive a commission of (5%) five percent of the sales price as mentioned in this listing or as finally accepted by me, providing the buyer has been introduced or interested through his efforts, this gives me the full privilege to sell my property privately if I can, and in this case I am to pay no commission.

Should I sell to a buyer of my own finding I agree to notify H. L. Staehlin immediately and will mention buyers name, Mr. Staehlin can then discontinue his efforts to sell, taking my property off his lists and I will owe him nothing. 30

Owners name Address.....

My phone No.

H. L. Staehlin—Specializing in Farm Sales.

275 Madison Avenue, Paterson, N. J.

Phone Sherwood 2-3184.

40

*Fred Jaeger—Direct.**By Mr. Kohlreiter:*

Q. Mr. Jaeger, were you present when this contract was executed? A. Yes, sir.

Q. Who was there? A. Mr. Todd, Mr. Todd's son, Mr. Smith, Mrs. Smith, and then we went over to New York State and signed there by notary public by the name of Ellson.

Q. And at that time was there any discussion regarding a listing blank?

Mr. Van Blarcom: I object, if your Honor please, to any conversations. The contract speaks for itself.

The Court: Sustain it.

Mr. Kohlreiter: The Court allow me an exception?

20 The Court: Yes.

By Mr. Kohlreiter:

Q. Mr. Jaeger, I show you this contract—

The Court: P-2.

Q. —P-2, and direct your attention to the paragraph which reads as follows: "And the said party of the (Ward Smith) agrees to pay to H. L. Staehlin, real estate broker of Paterson, N. J., his standard rate of commission on farm sales as stated in farmlisting blanks as issued by this agency, on the purchase price aforesaid, said commission to be paid in consideration of services rendered in consummating this sale, said commission to be paid upon delivery of deed," and I ask you whether or not this is not the farm listing blank which is issued by this agency, referring to H. L. Staehlin, and a copy of which you gave to Mr. Smith?

40

Fred Jaeger—Direct.

Mr. Van Blarcom: I object to that, if the Court please.

The Court: You see, that you have testimony that Mr. Staehlin mailed a listing blank; now you are saying that this witness in addition to mailing a listing blank handed him another listing blank, so that the defendant had two listing blanks. Now, I suppose those listing blanks have to be signed? 10

Mr. Kohlreiter: No, sir.

The Court: Well, I mean to say so far as the defendant is concerned; I don't so far as your practice is concerned. Now, you ask if the blank was mailed and the answer is yes, and then you want to show a copy and it is objected to, and then you say you saw the original and you demanded it and the defendant produced it. You didn't say the original, but you said you saw the defendants' counsel had it. 20

Mr. Kohlreiter: I saw something.

The Court: And he gave it to you and you have not used it.

(Extended discussion).

The Court: If you can show that that is the listing blank he handed him, all right, but you cannot, apparently. I don't know. Ask him. 30

By the Court:

Q. Is that the listing blank that you handed to Mr. Smith? Look at it. Is that the paper you handed to Mr. Smith? A. To tell you, Judge, I handed him two or three of those. Looks like one of them. 40

Fred Jaeger—Direct.

Mr. Van Blarcom: Looks like a copy of one. That is not the one he handed to him. That is what the Court asked him.

10 Q. Could you tell? A. I handed him two or three. He always said he lost one, so I always gave him another one.

Q. So you don't know whether that is the one or not, do you? There is nothing you can identify it by? A. These are the blanks that go out, I can say that.

Q. I understand that. Can you identify that by anything on it, any mark that you made or anything? A. Oh, I didn't mark it, no, sir. No, sir, I didn't mark it. I never mark any of them.

20 The Court: All right.

By Mr. Kohlreiter:

Q. Now, did you give Mr. Smith this listing blank on any one of these three occasions that you spoke about, two or three occasions?

Mr. Van Blarcom: I object to that. He said he can't identify it.

30 The Court: He has already said he cannot tell.

Q. Can you tell by looking at it whether or not you gave him one of these blanks?

Mr. Van Blarcom: He said he couldn't already.

A. Oh, yes, I gave him one of these blanks, apparently.

40 Mr. Van Blarcom: That is not the blank he gave him.

Fred Jaeger—Direct.

A. I won't say this is the blank I gave him, because I have no mark on it to prove.

Q. But that is— A. This is one of the blanks that we give out, but I can't swear this is the blank, because I didn't mark it.

Q. Well, when you say you can't swear that this is the blank, you mean this particular piece of paper? A. Certainly, sure. 10

Q. Well, did you give him an exact copy of this blank?

Mr. Van Blarcom: I object to that, if the Court please.

A. Absolutely.

Mr. Van Blarcom: I object to it. The Court has not ruled on it. I move to have it stricken out. 20

The Court: All right, I will let it stand. Go ahead.

Mr. Kohlreiter: I beg your pardon, sir?

The Court: Let it stand.

Mr. Kohlreiter: I offer it in evidence.

The Court: What?

Mr. Kohlreiter: I offer it in evidence.

The Court: No.

Mr. Van Blarcom: I object to its being offered in evidence. 30

The Court: Sustain the objection.

Mr. Kohlreiter: The Court allows me an exception.

By Mr. Kohlreiter:

Q. Mr. Jaeger, is this the listing—the farm listing blank represented—referred to in the contract which sets forth the rate of commission to be paid? 40

Fred Jaeger—Direct.

Mr. Van Blarcom: I object to that, if the Court please.

A. Yes sir.

Mr. Kohlreiter: I will withdraw that question for the moment.

10 Q. Mr. Jaeger, I show you exhibit P-2 and ask you whether or not this listing blank which is marked P-3 for identification is or is not the listing blank which is referred to in the contract that you have before you?

Mr. Van Blarcom: I object, if the Court please.

A. Yes, sir.

20 The Court: No, it is not. It can't be.

Mr. Van Blarcom: It is foolish for him to say so.

Mr. Kohlreiter: Of course, sir, it can be. This contract does not say that we are entitled to recover on the rate of commission on the listing blank which we give to them. It says that we are entitled to recover—

The Court: I understand.

30 Mr. Kohlreiter: —according to the rate of commission on our listing blank.

The Court: I understand that point thoroughly.

Mr. Kohlreiter: As a matter of fact, sir, if we never gave him a copy of the listing blank, but come into court and say this is the listing blank that is referred to in the contract, that, sir, meets, as I understand it, the case.

40 (Discussion at the side bar).

Fred Jaeger—Direct.

(A brief recess was taken at this point and the Court and counsel met in the Court's chambers, where a lengthy discussion was held).

After Recess.

FRED JAEGER, sworn.

10

Direct-examination (continued) By Mr. Kohlreiter:

Q. Mr. Jaeger, at the time this contract, P-2 was signed by Mr. and Mrs. Smith, the defendants, was there any conversation—

Mr. Van Blarcom: I object to any conversation.

The Court: Yes.

20

Q. Relating to a farm listing blank as issued by this agency, referring to H. L. Staehlin? Yes or no.

Mr. Van Blarcom: I object to that.

The Court: Yes or no.

A. I didn't just understand.

The Court: Read it, Mr. Stenographer? (The question was read by the reporter as follows):

30

“Mr. Jaeger, at the time this contract, P-2 was signed by Mr. and Mrs. Smith, the defendants, was there any conversation relating to a farm listing blank as issued by this agency, referring to H. L. Staehlin? Yes or no.”

A. No.

40

Fred Jaeger—Direct.

Q. Where was this contract signed—withdraw that. Did you understand that last question, Mr. Jaeger? I will withdraw it and repeat it. At the time this contract was signed was Mr. and Mrs. Smith both present at the same time? A. Yes.

10 Q. Did you have any talk at all with them? Yes or no. A. Yes.

Q. Did you have any talk at that time regarding the farm listing blank which is referred to in this contract? Yes or no.

Mr. Van Blarcom: I object to that, if the Court please.

A. At that time?

Q. At that time.

20 Mr. Van Blarcom: I object to it.
The Court: Yes or no.

A. Yes.

Q. What is the answer? A. Yes.

Q. Yes. Now, what conversation did you have regarding this farm listing blank?

Mr. Van Blarcom: I object to that.

The Court: Regarding which farm listing blank?

30 Mr. Kohlreiter: Regarding the farm listing blank referred to in exhibit P-2.

Mr. Van Blarcom: I object to that because there has been no connection.

Mr. Kohlreiter: The particular blank referred to in exhibit P-2, irrespective of which one it may be, sir.

Mr. Van Blarcom: I object to that.

The Court: I will sustain the objection.

Fred Jaeger—Direct.

Mr. Kohlreiter: The Court will allow me an exception.

By Mr. Kohlreiter:

Q. I show you exhibit P-2 and ask you to read that portion of the agreement wherein the farm listing blank is referred to. A. "And the said party of the first part"— 10

The Court: No, no.

Q. Just read it to yourself. Do you know what farm listing blank is referred to there? Yes or no? A. Yes, sir.

Q. I show you exhibit P-3 for identification and ask you whether or not that is the listing blank that is referred to.

Mr. Van Blarcom: I object to that. 20

The Court: Sustain it.

Mr. Kohlreiter: The Court will allow me an exception.

By Mr. Kohlreiter:

Q. I call your attention to that portion of exhibit P-3 for identification wherein is stated—

Mr. Van Blarcom: I object to his reading anything. 30

Mr. Kohlreiter: I want to ask the question. "It is agreed that H. L. Staehlin"—

Mr. Van Blarcom: I object to that, if the Court please.

The Court: Oh, no, that is not in evidence; you can't read that if it is not in evidence.

By Mr. Kohlreiter:

Q. Was there any conversation at the time that 40

Fred Jaeger—Direct.

agreement was signed regarding a farm listing blank and the rate of commission? Yes or no.

A. Yes, sir.

Q. What was that conversation?

Mr. Van Blarcom: I object to that, if the Court please.

10 The Court: Sustain it.

Mr. Kohlreiter: The Court will allow me an exception.

By Mr. Kohlreiter:

Q. Did you give Mr. Smith an exact replica or duplicate of this paper which is marked exhibit P-3 for identification.

Mr. Van Blarcom: I object to that.

20 A. I did.

Mr. Van Blarcom: I object to it.

The Court: I will let it stand.

Mr. Kohlreiter: Let it stand?

Mr. Van Blarcom: Strike it out.

The Court: No, let it stand.

Mr. Kohlreiter: I now offer the paper in evidence.

30 Mr. Van Blarcom: I object to him offering it in evidence.

The Court: I will sustain it on the ground that is not the paper.

Mr. Kohlreiter: The Court will allow me an exception.

That is all, Mr. Jaeger.

Mr. Van Blarcom: No questions.

40

Henry L. Staehlin—Recalled—Direct.

HENRY L. STAEHLIN, recalled.

Direct-examination by Mr. Kohlreiter:

Q. Mr. Staehlin, I show you this paper which is marked P-3 for identification and ask you whether or not you were using any other form listing blanks or farm listing blanks at or on December 8.

10

Mr. Van Blarcom: I object to that, if the Court please.

(The question was read by the reporter).

The Court: He has already answered that. He said the white one was a farm listing blank.

Mr. Kohlreiter: Yes, and I am asking him now whether he was using or is issuing any farm listing blanks other than this one. That, sir, may have been issued a year ago, two years ago or three years ago. We don't know.

20

Mr. Van Blarcom: He called for it. It was in our possession.

The Court: I don't know. You called for it in the defendants' possession and he passed it out, so it must have been sent to him, I presume.

Mr. Kohlreiter: He didn't say that, sir.

30

The Court: All right, I will permit it.

Mr. Van Blarcom: Exception, please.

By Mr. Kohlreiter:

Q. Will you answer that question. A. This is the form that I had been using about that time—

The Court: No.

A. —December 8.

40

Henry L. Staehlin—Recalled—Direct.

(The question was read by the reporter).

Mr. Kohlreiter: That is the question.

A. He asked if I was using that—

The Court: No, strike that out.

10 Q. Were you using any other form but that one around December 8? A. Not at that time. I was using this here kind of form.

Q. And on the 28th of March, 1931, was your agency issuing or using any other farm blank other than this one?

Mr. Van Blarcom: I object to that, if the Court please. He has already identified a blank that he was using.

The Court: I will permit it.

20 Mr. Van Blarcom: Exception, please.

A. I didn't understand that question.

Q. On March 28, 1931, which is the date of exhibit P-2 which is now in evidence, was your agency—

The Court: Oh, no, no. Was he? He is suppose to know what they were doing. What does he know? Not what the agency did.

30

Q. Were you using or issuing any other farm blanks but the one that you now hold in your hand which is marked P-3 for identification. A. This is the blank that I was using.

Q. Were you using any other? A. I might have run out of these and made new ones. I run out of blanks and make new ones up. The white blank is an old one.

40

Henry L. Staehlin—Recalled—Direct.

Mr. Van Blarcom: I object to that, if the Court please.

Q. What blank is an old one, Mr. Staehlin? A. The white blank.

Q. The white blank. Did you have in 1930, December, 1930, or 1931, and use the white blank?

A. No, I haven't been using that blank. 10

Q. How long before December, 1930, did you use that white blank? A. I ran out of those white blanks a long time ago.

Q. And when you mailed a blank in December, 1930, you would not have been using the white blank?

Mr. Van Blarcom: I object to that, if the Court please.

A. No, sir. 20

Mr. Van Blarcom: That doesn't say he didn't mail it.

The Court: No. Strike it out.

Mr. Kohlreiter: I beg your pardon?

The Court: It is leading and I won't permit it.

Mr. Kohlreiter: I will withdraw it.

The Court: It is leading. I won't permit it. 30

By Mr. Kohlreiter:

Q. Did you or did you not in December of 1930 or the early part of 1931 use that white blank? Yes or no. A. No.

By the Court:

Q. You said you may have mailed that white blank. A. I am sorry. It must have been quite a 40

Henry L. Staehlin—Recalled—Direct.

long time, because I am using—after I used those all up, out of print, I made others up. I still have another blank here later than that.

Q. Well, did you mail this white blank to the other party? A. I don't know. I don't know whether I mailed it to him or not.

10 Q. You don't know? A. It was mailed, mailed to various people in Sussex County in answer to my advertisement.

Q. Yes. A. It may have been mailed to a next door neighbor.

Q. And it may have been in answer to this letter that you wrote? A. I doubt it very much. December 8 I was using that type of blank.

By Mr. Kohlreiter:

20 Q. So that on December 8 you were using this type of blank and you doubt very much whether you mailed that white one; is that right? A. That is right.

Mr. Van Blarcom: I don't think counsel should tell the witness what to answer.

Q. Since you were on the stand before, Mr. Staehlin, have you refreshed your recollection regarding this white blank? A. I have, yes.

30 Q. And would you say now under oath whether or not you mailed that white blank to Mrs. Smith?

Mr. Van Blarcom: I object to that.

The Court: If he knows whether he did or not.

A. I am—I am positive around December 8 I did not have those blanks to mail.

By the Court:

40 Q. Well, do you know whether or not you mail-

Henry L. Staehlin—Recalled—Direct.

ed it to him? A. Well, I don't recollect mailing it to him. The blanks that I mailed were that type.

By Mr. Kohlreiter:

Q. And at that time the only blank you were using was this type. A. That was the type I was using.

10

Mr. Van Blarcom: I object to that.

The Court: Strike it out.

Mr. Kohlreiter: I will withdraw it.

Q. Now, just tell us, Mr. Staehlin, what blank, then, you were using in December of 1930.

Mr. Van Blarcom: I object to that.

The Court: He has already answered that.

Mr. Kohlreiter: I beg your pardon, sir? 20

The Court: He has already answered that.

Mr. Kohlreiter: I don't believe I have that on the record. May I have the answer to it again, please?

The Court: No. He has already answered it.

By Mr. Kohlreiter:

Q. Referring to the contract wherein the farm listing blanks as issued by your agency, stating the rate of commission to be paid—will you tell the court whether or not this is or is not the farm listing blank referred to in this contract.

30

Mr. Van Blarcom: I object to that, if your Honor please.

A. That is the one.

40

Irvin A. Todd—Direct.

The Court: Strike it out.

Mr. Kohlreiter: The Court will allow me exception?

The Court: Yes, because it stands to reason it can't be. You admit yourself it is only a copy of a blank referred to.

10

Mr. Kohlreiter: Oh, no, I don't. I say that is a copy of the one that was handed to Mr. Smith, but I say that it is the contract—the blank that is referred to in the contract.

The Court: It is a copy. That we agree on.

Mr. Kohlreiter: I would like at this time to serve a notice to produce on my adversary.

20

The Court: I don't think you have any right to serve a notice to produce when the trial is half over, or almost completed.

Mr. Kohlreiter: I would like to make the service at this time, sir, if I may. That is all, Mr. Staehlin.

30

IRVIN A. TODD, sworn.

Direct-examination by Mr. Kohlreiter:

Q. Mr. Todd, where do you live? A. 155 Dundee Avenue, Paterson.

Q. What is your full name? A. Irvin A. Todd.

Q. Did you know Mr. Staehlin and Mr. Jaeger? A. Yes.

Q. Did you have any business with them in the early part of 1931? A. Yes.

40

Q. Did they take you down and show you a farm

Irvin A. Todd—Direct.

in Sussex belonging to the defendants, Mr. Ward Smith and Mrs. Ward Smith? A. Yes.

Q. Did you look at that farm? A. Yes.

Q. How many times were you up there in all, Mr. Todd, approximately? A. I think I was there about five times.

Q. And did you finally agree to purchase this farm? A. Yes, sir. 10

Q. I show you this contract which is marked exhibit P-2 in evidence and ask you whether or not that is your signature. A. Yes.

Q. Did you pay a deposit? A. Yes, sir.

Q. Upon the purchase of this farm? A. Yes, sir.

Q. Why didn't you eventually buy it? A. There was a shortage in the ground.

Q. And did Mr. Smith tell you at the time you saw this farm how many acres there were there? A. No, sir. 20

Q. How many acres were there supposed to be in this farm? A. Mr. Jaeger says 168 acres.

Q. Did you have the property searched? A. No.

Q. Eh? A. No.

Q. Did Mr. Smith? A. There was a survey—

Q. When did you find out there was only 146 acres? A. When I went up there after the thing had been—the check had been given, I went up there to demand the deed, and a search, and he showed me a tax bill. 30

Q. And at that time, March 28, 1931, were you ready, able and willing to buy this farm if it contained 168 acres? A. Yes, sir.

Q. Did you have the money with which to pay for this farm? A. I did, yes.

Irvin A. Todd—Cross.

Q. And where did you have that money, Mr. Todd? A. In the bank.

Q. What bank? A. Down here on Market Street.

Q. The Paterson Savings Bank? A. Paterson Savings.

10 Mr. Kohlreiter: Cross-examine.

Cross-examination by Mr. Van Blarcom:

Q. At the time, Mr. Todd, you gave a check, did you, for \$200 in payment—was that the check you gave (handing a paper to the witness)? A. Yes, sir, I think it is. I can't see very well here without glasses.

20 Q. That is all right. A. Yes, sir, that is my check.

Q. And you stopped payment on it? A. I stopped payment on it.

Q. How soon after the check was given did you stop payment on it? A. Oh, I can't say the exact date.

Q. Do you remember when the contract—the day the contract was signed? A. The contract was signed on a Saturday.

30 Q. Yes. And shortly after that—how long after that did you stop payment on the check? A. I think it was probably Wednesday or Thursday.

Mr. Van Blarcom: That is all. No questions.

HENRY L. STAEHLIN, recalled.

The Court: What is this?

40

Henry L. Staehlin—Recalled—Direct.

Mr. Kohlreiter: With regards to the shortage of the acreage, sir.

The Court: All right.

Direct-examination by Mr. Kohlreiter:

Q. Mr. Staehlin, did you have any conversation with Mr. Smith regarding the number of acres in this tract after the deal had fallen through? A. Yes. 10

Q. And what did Mr. Smith say with regard to the amount of acres? Was there 168 acres or not? A. No. It showed up to be 146 acres instead of 168 acres.

Q. Did he tell you that after the deal had fallen through? A. Yes. He admitted it afterwards.

Mr. Kohlreiter: That is all. 20

Mr. Van Blarcom: No questions.

Mr. Kohlreiter: I now serve upon counsel a notice to produce a yellow farm listing blank with blue printing thereon, wherein it states that the rate of commission is five per cent.

Mr. Van Blarcom: Your Honor has already moved on that. I think it is too late now to make that demand. 30

Mr. Kohlreiter: It is for the purpose of the record.

The Court: Have you any more witnesses?

Mr. Kohlreiter: I beg your pardon, sir?

The Court: Have you any more witnesses?

Mr. Kohlreiter: No, I have not. As I understand the practice, a notice to produce may be served at any time during the trial. 40

Motion for Non-Suit.

10 The Court: Notice to produce has been served by the plaintiff's attorney upon the defendant at the close of the plaintiff's case. I do not think it is a proper or fair notice to the defendant to produce any paper, and furthermore, at the beginning of the case a personal demand was made for the production of a paper, and a paper was produced.

Mr. Kohlreiter: A paper, sir, that I demand now has not been produced at any time. I demand a yellow paper that has blue printing on it, in which the rate of commission is stated at five per cent.

20 The Court: I understand fully. You now demand another paper because you have admitted in this case that you have two sets of listing blanks, farm listing blanks.

 MOTION FOR NON-SUIT.

30 Mr. Van Blarcom: If the Court please, I move for a non-suit on the ground that the plaintiff has failed to establish any agreement for the payment of commissions wherein the percentage on the dollar is stated.

The Court: I will grant the motion.

Mr. Kohlreiter: Your Honor allows me an exception?

The Court: 35 Law at page 38. I think that case is in point.

New Jersey Court of Errors and Appeals

HENRY L. STAEHLIN, Plaintiff-Appellant, vs. WARD SMITH and MRS. WARD SMITH, Defendants-Appellees.	}	On Appeal from New Jersey Supreme Court, Passaic Circuit. BRIEF OF DEFENDANTS- RESPONDENTS.
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FACTS.

Ward Smith and his wife, Edith Smith, sued as Mrs. Ward Smith, the defendants-appellees, are the owners of a farm situate in Wantage Township, Sussex County, New Jersey.

Sometime prior to March, 1931, Ward Smith wrote to the plaintiff, Henry L. Staehlin, describing said farm and requesting listing blanks. (See State of Case, page 17, Exhibit P-1). In response to this letter plaintiff sent defendant a blank identified as a white paper and mentioned on Page 18, State of Case. This is not the listing blank which the plaintiff attempted to place in evidence.

On March 28, 1931, the defendants signed an agreement to sell said farm to one Irvin A. Todd. (See Exhibit P-2, Page 21, State of Case). Todd gave defendants his check for \$200.00 at the time said agreement was executed, but afterwards stopped payment of said check, (State of Case, page 50) alleging there was a shortage in the acreage (State of Case, page 49). The sale was never consummated.

The said agreement contained a clause reading as follows:

“And the said party of the first part (Ward Smith) agrees to pay H. L. Staehlin, real estate broker of Paterson, N. J., his standard rate of commission on farm sales as stated in Farm listing blanks as issued by this agency, on the purchase price aforesaid, said commission to be paid in consideration of services rendered in consummating this sale, said commission to be paid upon delivery of deed.” (Page 23, State of Case).

This was the only writing signed by either of the defendants in which any mention of commissions was made. Plaintiff sued defendants to recover his commissions basing his action on this clause in the agreement.

Defendants claim that this agreement is not sufficient upon which to base an action. Under section 10 of “An act for the prevention of frauds and perjuries,” and as amended by Chapter 273, Laws of 1918, plaintiff had not met the requirements of this act in that the agreement upon which he based his action does not state the rate of commission on the dollar as provided by the Statute.

Plaintiff attempted at the trial to offer in evidence a listing blank in a general form as issued by his office as shown on Page 29, State of Case. Plaintiff admitted that he had three distinct forms which he used (Page 18, State of Case) and on Page 19 stated that he had about a dozen different kinds. Defendants objected to the admission of the blank which was unsigned, which objection the court properly sustained. The introduction

of this blank was objectionable upon two grounds. First, that it was immaterial and incompetent and second, that it was an attempt to introduce secondary evidence without the proper foundation. The plaintiff made no demand of the defendants to produce until the close of his case, at which time the court ruled that it was too late. (State of Case, page 51). A motion for a non-suit was granted. (State of Case, page 52).

POINT I.

The trial court properly excluded a paper marked P-3 for identification.

Defendants claim that the clause in the agreement was not sufficient upon which to base the action, in that it did not state the rate of commissions on the dollar.

(Citing SMITH v. PAZEN et al, 138 ATL., page 513.

HUETH v. STEVENSON, et al, 100 N. J. LAW, page 1.
124 ATL. page 773.)

An examination of the cases cited by the plaintiff show that they are not analogous with the case in point and that none of these cases treat with Section 10 of the Act, with one exception;

(MENDLES v. DANISH, 74 N. J. L., page 333.) On Page 336 of this case the court says: "Where the compensation is to be a commission, then of course the percentage on the dollar must be stated in the authority."

Defendants therefor contend that the per-

centage on the dollar was not stated in the agreement sufficiently to meet the requirements of the Statute, which is explicit, and that it was improper to read into the agreement, either as explanatory or otherwise, any extraneous papers, unsigned by the defendants and admitted by the plaintiff to be one of several forms provided by him and any one of which might be selected by him to meet his requirements.

Further there is no good reason apparent why the percentage on the dollar should not be expressed in the agreement as the Statute directs, or why it should be permitted to introduce other evidence or papers unsigned by the person to be charged to be read into the agreement, which action would tend to defeat the purpose of the Act which is to prevent frauds and perjuries.

POINT II.

The alleged listing blank was properly excluded for the fact that it was offered merely as a copy and at the best secondary evidence, without a proper foundation being laid. The demand to produce being made improvidently and too late to be binding on the defendants.

It is therefor respectfully submitted that the court committed no error in excluding said listing blank and that he properly ruled that the agreement upon which the action was based was not sufficient to meet the requirements of the Statute and properly granted a non-suit and that said action of the Court should be confirmed.

Respectfully submitted,
LEWIS VAN BLARCOM,
Attorney and of Counsel for Defendants-
Appellees.

New Jersey Court of Errors & Appeals

Henry L. Staehlin,
Plaintiff-Appellant,

vs.

Ward Smith and Mrs. Ward
Smith,
Defendants-Appellees.

This is an appeal from a judgment of non-suit rendered in the New Jersey Supreme Court. This matter came on for trial before the Honorable William B. Mackay, Circuit Court Judge, sitting at the Passaic Circuit. At the close of plaintiff's case upon a motion made for that purpose, a non-suit was entered against the plaintiff, Henry L. Staehlin and in favor of the defendants.

Plaintiff duly noted and entered an exception to the ruling of the court (State of Case, page 52, line 32).

STATEMENT OF FACTS

The action was commenced by the plaintiff for the recovery of broker's commission earned in a real estate transaction.

At the trial of this case, the following facts appeared on the testimony. Plaintiff was a duly licensed real estate broker specializing in the sale of farm property. In response to plaintiff's advertisements in a newspaper, defendants who were the owners of a farm in Sussex County sent plaintiff a letter (State of Case, page 17) requesting plaintiff to list their property for sale and to forward to them (defendants) a farm listing blank.

In response to said letter plaintiff, by his agent, visited the defendants at their farm in Sussex at which time said agent gave to defendants a farm listing blank (State of Case, page 29, line 3 and line 16), which said blank contained the following clause:

“It is agreed that H. L. Staehlin is to receive a commission of Five per cent (5%) of the sales price as mentioned in this listing or as finally accepted by me, provided the buyer has been introduced or interested through his efforts, this gives me the full privilege to sell my property privately if I can, and in this case I am to pay no commission.

Should I sell to a buyer of my own finding I agree to notify H. L. Staehlin immediately and will mention buyers name, Mr. Staehlin can then discontinue his efforts to sell, taking my property off his lists and I will owe him nothing.” (State of Case, page 33, line 21 to 33.)

The evidence further disclosed that plaintiff by his efforts procured a purchaser who was ready, able and willing to buy the defendants' property upon the terms and conditions proposed by defendants, the owners, and that an agreement in writing between the defendants and the said purchaser was executed. (State of Case, page 21 to 23.)

Said contract contained inter alia the following clause:

“And the said party of the first part (Smith) agrees to pay H. L. Staehlin, real estate broker of Paterson, N. J., his standard rate of commission of farm sales AS STATED IN THE FARM LISTING BLANKS *as issued by this agency*, (Italic ours), on the purchase price aforesaid, said commission to be paid in consideration of services rendered in consumating this sale, said commission to be paid upon delivery of deed.”

The testimony regarding the paper P3 for identification was to the effect that it was “one of the listing blanks as is issued by” the plaintiff, wherein the rate of commission was stated. (State of case, page 27, line 37.)

The testimony further disclosed that the said purchaser procured by plaintiff was ready, able and willing to buy but that the said sale was not consumated because of certain representations made by the defendants, which proved to be false.

Plaintiff then demanded his commissions and was refused the same.

The error complained of in this case, is the refusal of the trial court to receive into evidence the “farm listing blank” marked P3 for identification (State of case, pages 29 to 33) which by reference, in the signed contract marked P2 in evidence, was made part of such contract, and both read together constituted an agreement which satisfies the Statute of Frauds.

The doctrine of law which the plaintiff sought to apply in this case, viz: that of incorporation by reference, is clearly distinguishable from the rule prohibiting the supplying of missing terms of an agreement by parol, in that, the reference to a separate paper makes such paper a part of the signed agreement and no parol evidence is necessary to furnish any detail, and hence the signed agreement, together with the writing therein referred to constitute the entire writing, and satisfies the Statute of Frauds.

At the close of plaintiff's case and by reason of the refusal of the court to permit into evidence the paper marked P3 for Identification, a motion for a non-suit was granted. An exception to the court's ruling was prayed for and granted.

POINT I

THE TRIAL COURT ERRED WHEN IT REFUSED TO ADMIT INTO EVIDENCE, A PAPER MARKED P3 FOR IDENTIFICATION, WHICH BY REFERENCE IN THE WRITTEN CONTRACT MARKED EXHIBIT P2 IN EVIDENCE, FORMED A PART OF SAID WRITTEN CONTRACT.

The situation that is presented from the facts in this case is one where the parties to the written agreement which contains all of their terms, by referring therein to a detached paper which clearly indicates that the intention of the parties was that the papers were to be read together, the one signed by the party to be charged and the one therein referred to.

Judge Ackerson in the case of BECKER V. KELSEY in 9 Misc. Reports 1265 at page 1284 said:

“This is an instance for the application of the familiar rule declaring ‘that is certain which by necessary reference is made certain’.”

So in this case, the plaintiff contends that the written agreement signed by the defendants is made certain by the reference contained therein to the detached paper, which was marked P3 for identification at the time of the trial.

It is the plaintiff's contention that the contract, which is the basis of this suit and the paper marked P3 for Identification constitutes a writing which satisfies the Statute of Frauds. The authority for the above statement is to be found in the following cases which contain the judicial expression of our courts upon this subject.

Vice-Chancellor Lewis in the case of BUCKLEY VS. THE MAYOR, &C. OF JERSEY CITY, 105 EQ. at 481 said:

“A complete contract binding under the Statute of Frauds may be gathered from letters, writings and other documentary evidence existing between the parties, relating to the subject matter of the contract and so connected with each other that they may be fairly said to constitute one paper relating to the contract, and this though only one of the writing, may be signed by the party to be charged.”

Likewise did Judge Ackerson in the case of BECKER V. KELSEY, 9 Misc. page 1265 at 1283 say in answer to the defendant's twenty-eighth defense to the effect that the agreement upon which the action is based is incomplete because all of the terms of the Bond and Mortgage are not specified in the Agreement:

"It cannot be said as a matter of law that the agreement in question is incomplete in the particulars above specified. The amount of the Bond and Mortgage is determined in the agreement as the amount then due on the decree, with costs and sheriff's fees. * * * So that we had a situation where the parties to the agreement have agreed upon all their terms by referring in the written agreement to a detached paper which may be properly identified by parol testimony. *It is well settled that the fifth section of the Statute of Frauds (2 Compiled Statute, page 2612) is sufficiently complied with if the agreement is contained in several papers, provided that the paper which is signed refers to the others in such a way that they may be identified by parol, if the intention that the papers are to be read together appears upon the face of the paper which is properly signed. (Italics ours.)* Johnson & Miller v. Buck, 35 N. J. Law 338 (at page 344); 27 C. J. 384, Section 477. For anything appearing on the face of the agreement in question, the provisions assailed as indefinite and uncertain may be reduced by competent evidence to definite terms.

This is an instance for the application of the familiar ruling declaring 'that is certain which by necessary reference is made certain.' (Citing *Cross v. Snakenberg*, 26 Iowa 636; 102 N. W. Report 508; *Mercer v. Payne-Carnaby Co.* (Nev.) 192 Id 951)."

A further examination of our authorities discloses the case of *CHARLETON VS. COLUMBIA REAL ESTATE CO.*, in 67 N. J. E. 629 wherein Justice Fort speaking for the Court of Errors and Appeals said at page 632 and 633:

"Our Statute reads as follows: 'That no action shall be brought * * * (4) upon any contract or sale of lands, tenements or hereditaments or any interest in or concerning them, * * * unless the agreement upon which such action shall be brought, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith, or some other person thereunto by him or her lawfully authorized.' 2 Gen. Stat. p. 1603, par. 5.

The signing by the complainant is immaterial; only the party to be charged therewith need sign. * * *

Nor is it necessary that all the terms of the contract be agreed to at one time, nor written down at one time, nor on one piece of paper. If all the papers, taken together, contain the whole bargain, they form such a memorandum as will satisfy the Statute. (Italics ours.)

Nor does it signify to whom the memorandum is expressed; it may be to a third

person and yet be a good writing to satisfy the Statute of Frauds. Form is not important. The memorandum or note is only evidence what the contract was. To prevent perjury as to such contracts, the Statute declares that evidence of what the contract was must be contained in some memorandum or note in writing, signed by the party to be charged therewith. When the memorandum exists, and is legally given in testimony, it becomes *evidence* (Italics ours) of the contract claimed to have been made. The memorandum is not the contract, but *only evidence of contract.* (Italics ours.)”

So in the case of JOHNSON AND MILLER V. BUCK, 35 N. J. L. page 339 at page 344, Justice Depue speaking for the New Jersey Supreme Court said:

“It is not essential that the whole bargain be contained in one memorandum. It will be sufficient to satisfy the Statute if its terms can be gathered from two or more detached papers, if the signed memorandum contains such reference to the other papers as to make the latter part of the former. The connection between the signed and the unsigned papers cannot be made by parol evidence that they were actually intended to be read together, or all the facts and circumstances from which such intention may be inferred. The connection between them must appear by internal evidence derived from the signed memo-

randum. Parol testimony will be received only for the purpose of interpretation or explanation where technical terms are employed or to identify papers which, by a reference in the signed memorandum are made parts of it."

This quotation clearly evidences the fact that in the case at bar, the paper known as the "farm listing blank" which was referred to in the signed contract marked P2 in Evidence, was intended to be made part of it. For in *the signed contract*, the parties said that they:

"* * * agrees to pay H. L. Staehlin, real estate broker of Paterson, N. J., his standard rate of commission on farm sales **AS STATED IN FARM LISTING BLANKS AS ISSUED BY THIS AGENCY.**" (Italics ours.)

Is this not a direct, definite reference to a paper with the clear intention of making the same a part of that written agreement? Could the parties have employed more explicit language or could they have more clearly indicated to what paper they referred? Could their intention have been other than to pay the rate of commission "on farm sales as stated in farm listing blanks as issued by this agency?"

To hold other, than that the farm listing blank was a part of this written contract would be in contravention both of the spirit and of the letter of the Statute of Frauds; and as Justice

White in the case of BIRCH VS. BAKER in 85 Law at page 669 said:

“The purpose of the Statute of Frauds is to prevent fraud. The question of its applicability is largely dependent upon its purpose. The Statute is, therefore, not permitted to be invoked to perpetrate an equitable fraud.”

And as was further stated by the Court, in MENDLES V. DANISH, 74 N. J. L. 333, in discussing Section 10 of the Statute of Frauds:

“It cannot be doubted but that the purpose of this act was to prevent fraud and perjury, and if the contract in question is not within this Statute, it leaves open all such special contracts to be established by parol proof, thus inviting the evil which it was the intent of the Statute to prevent. In such a construction, the rule is that we should so construe the Statute as to suppress the mischief and advance the remedy.”

Could this rule be invoked with more propriety in a case other than the one at bar? Should the defendants, who have consented to their bargain in writing be permitted to invoke the benefit of the Statute of Frauds? Would that not advance the mischief and suppress the remedy rather than suppress the mischief and advance the remedy?

CONCLUSION

For the reasons hercin set out, it is respectfully submitted that the judgment of non-suit entered in the above cause should be reversed and a new trial ordered.

Respectfully submitted,

COHN & KOHLREITER,
Attorneys for Plaintiff-Appellant.

PETER COHN,
Of Counsel.

