

# New Jersey Court of Errors and Appeals.

KLEMENTINA BATURA, ET. AL.,  
Plaintiffs in Error,  
vs.  
THOMAS McBRIDE,  
Defendant in Error. } On Error to  
Supreme Court. 10

## BRIEF FOR DEFENDANT IN ERROR.

This was a Supreme Court issue, tried in Union County, before Judge Vail. 20

The suit was brought by the plaintiffs for damages by reason of the alleged fraud and deceit of the defendant, in that he falsely represented that certain lands and premises contracted to be conveyed by him to the plaintiffs on April 25, 1906, and which were actually conveyed by deed dated May 1, 1906, and acknowledged on May 24, 1906, produced a monthly rental of \$142, of which sum \$35 was paid by George W. Wiedenmayer, Incorporated, for a portion of the said premises. 30

The particular false representation alleged to have been made was that the defendant represented that the reserved rent under the lease held by said Wiedenmayer was \$35 per month, and, that at the time of making such representations the defendant knew that the reserved rental under said lease was \$25 per month. (See Declaration, case p. 3, et seq.)

The defendant moved for a non-suit which was not granted.

No testimony being offered by the defendant, the 40

Court directed a verdict for the plaintiffs for six cents, to which instruction the plaintiffs excepted.

The plaintiffs also took four exceptions, alleging exclusion of legal evidence.

The first and second exceptions relate to the exclusion of evidence of the witness, George W. Wiedemayer, on direct examination, the questions asked and overruled being as follows:

10 Q. How much rent have you been paying for the property under the lease?

MR. WOLFSKEIL: I object. The lease speaks for itself.

Q. Since the expiration thereof and under the renewal?

Overruled.

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(Case p. 39-40 and 52-53).

Q. How much rent have you paid from May 1, until the present time?

Overruled.

(Case p. 40-41 and 53).

Q. Did you surrender your rights under this lease?

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Overruled.

(Case p. 41 and 54).

Q. Did O'Neal not pay that rent with your money?  
Overruled.

(Case p. 45 and 54).

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On cross-examination the same witness said that he

never paid anything directly to the defendant; that Frank O'Neal, who was witness's sub-tenant, paid the rent from the very first month that he was in there; that is, from April 1, 1900, and during the entire five years; that during the whole five years the brewery never paid a cent; that after April 1, 1905, and until McBride sold the property the witness did not pay the rent: that the same condition of parties continued from April 1, 1905, until April 1, 1906, which had existed during the entire period of years; and that the witness had not seen McBride from April 1, 1900, until the lease expired, in connection with the property. 10

(Case p. 42 and 43).

It is very clear from this testimony that the witness, Wiedenmayer, had no personal dealings with the defendant, and that he had nothing whatever to do with the payment of the rent or had any knowledge concerning the same.

The questions set forth in the first and second exceptions were unanswerable by the witness, from his own knowledge, and the plaintiffs were not prejudiced by the exclusion. 20

When the trial court overrules a question upon objection, which is intended to adduce certain evidence, if afterwards, from the same witness, the party has the benefit of the same evidence in answer to other questions, he will not be heard to complain of the error in overruling the question, nor will the Court consider whether error was committed in the overruling of the question, because if the party taking the exception has afterwards the benefit of the evidence he is not at all prejudiced by the error, if it existed. 30

*Chesebrough v. Tirrill*, 32 Vr. 629.

Third exception: Exclusion of evidence of witness, John J. Stamler, concerning conversation had with defendant after the date of the passing of the deed from defendant to plaintiffs.

(Case p. 18, 19 and 55).

This is an action for deceit.

It is settled in this Court that to support an action for deceit, there must appear a false representation, made with a fraudulent intent, producing injury to the plaintiff.

*Eibel v. Fell*, 34 Vr. 4.

10 It is difficult to perceive how evidence of any conversation had with the defendant after the date of passing of the deed, would be competent, at this time, to prove deceit, and it is respectfully submitted that the Court properly excluded the evidence.

Fourth exception: Exclusion of evidence by the witness, Charles L. Morgan, for the purpose of showing that the lease was not on record.

(Case p. 49, 50 and 56, 57).

20 Whether or not the lease in question was recorded, was wholly immaterial and the exclusion of the evidence relating thereto could not prejudice the plaintiffs.

Fifth and Sixth Exceptions: Direction of verdict and verdict for nominal damages.

A careful examination of the evidence fails to disclose any proof whatever of damages.

The Court, therefore, having refused a non-suit, in the absence of any defense, very properly directed a verdict for nominal damages.

30 It is the duty of a Court to control a jury in its verdict by a binding instruction when the testimony in the case will not support any other verdict than that which is directed.

*Lippencott v. Sup. Council*, 35 Vr. 309.

*Baldwin v. Shannon*, 14 Vr. 596.

*Crue v. Caldwell*, 23 Vr. 215.

40 *Haines v. Merrill Trust Co.*, 27 Vr. 312.

A peremptory instruction may be given to the jury if the testimony is so conclusive that the Court would be compelled in the exercise of a sound, legal discretion, to set aside the verdict, if one were returned in opposition to such testimony.

*Montclair v. Dana*, 107 U. S. 162.

If actual injury be not proved, nominal damages alone can be recovered. 10

*Furniture Co. v. Bd. of Ed.*, 29 Vr. 647.

If the extent of the injury is not proven, nominal damages only can be recovered.

*Lance v. Apgar*. 31 Vr. 448.

It is a general rule, applicable to all actions, whether ex contractu or ex delicto, that the amount of damages which a plaintiff is entitled to recover, must not only be alleged, but proved with reasonable certainty by competent evidence as well. 20

13 Cyc. 213 C.

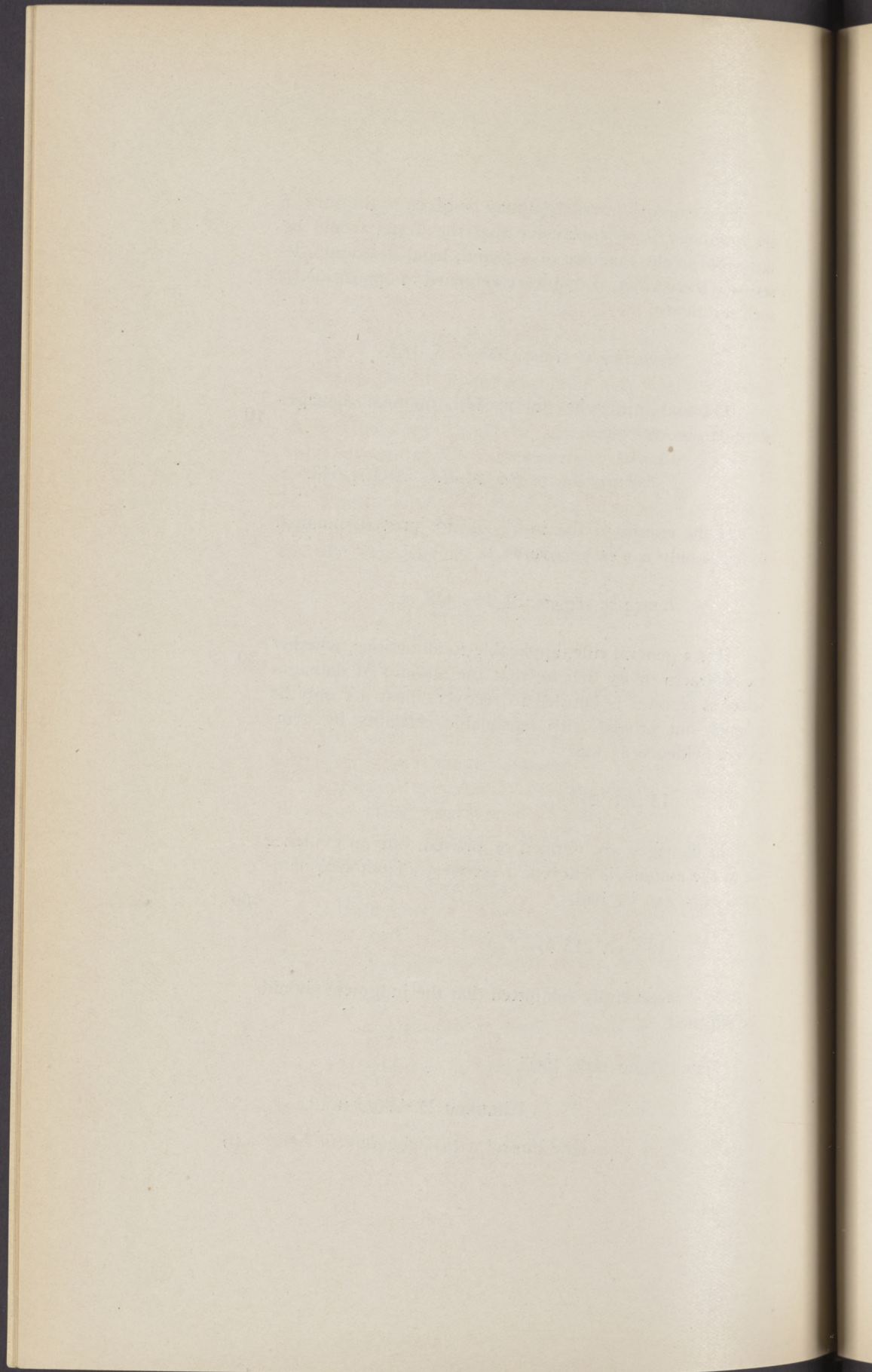
If damages are implied or proved, but no evidence as to the amount is offered, a recovery of nominal damages only can be had. 30

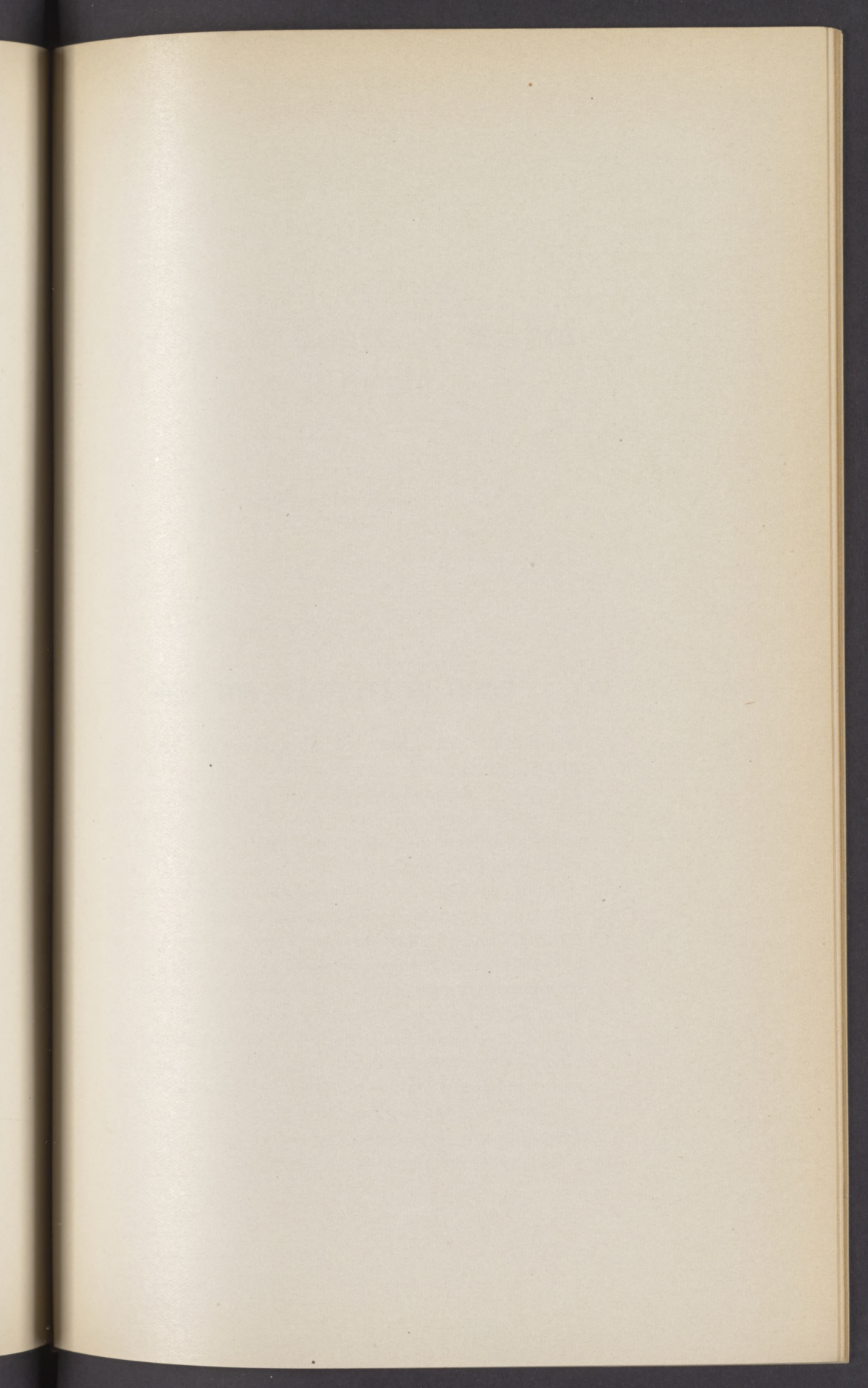
13 Cyc. 215 b.

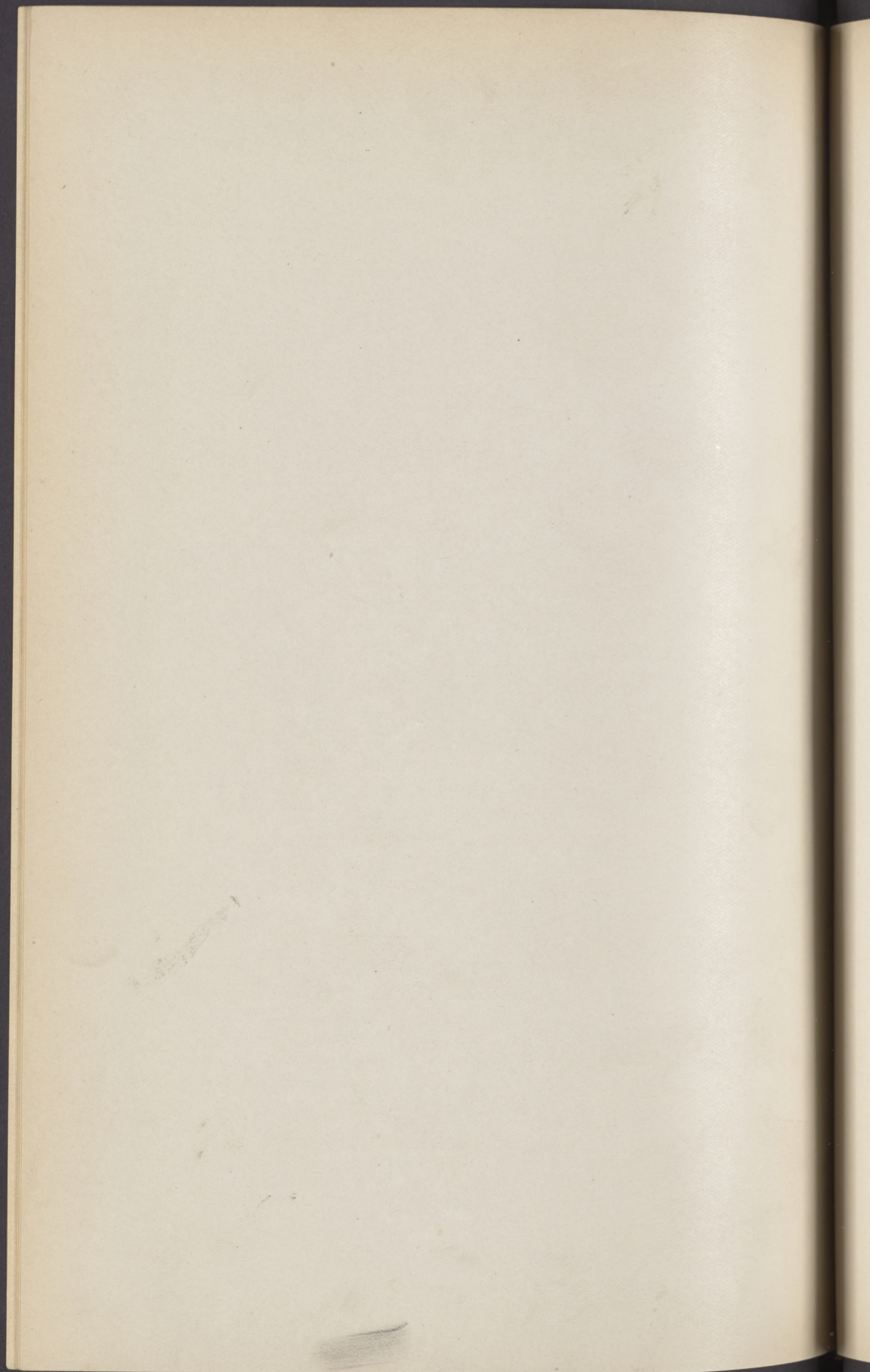
It is respectfully submitted that the judgment should be affirmed.

Dated, June 18th, 1907.

WILLIAM D. WOLFSKEIL,  
Of Counsel with Defendant in Error. 40







# New Jersey Court of Errors and Appeals

KLEMENTINA BATURA, ET AL.,

*Plaintiffs in Error,*

*vs.*

JOSEPH MCBRIDE,

*Defendant in Error.*

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*On Error to  
Supreme Court.*

## BRIEF FOR PLAINTIFFS IN ERROR

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On the twenty-fifth day of April, Nineteen hundred and six, Thomas McBride was the owner of certain property, situated in the City of Elizabeth, County of Union, and State of New Jersey, known as Nos. 224 to 230, inclusive, First Street; he commenced negotiations with the plaintiffs for the sale of said property; he represented to them, and to their lawyer, John J. Stamler, and to the agent Adolph Reitman, that the property was producing an income of One hundred and forty-two (142) dollars monthly, and that the corner store of the property, which was then occupied as a saloon, was under lease to George Weidenmayer at a monthly rental of Thirty-five dollars, and that said lease had about four years more to run. After such representations were made an agreement was entered into for the sale of said property, by and between the respective parties, in which it was expressly provided that the premises are conveyed subject to a

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lease of the corner store held by George *Whittemeyer* of Newark. Pursuant to the terms of said contract, on the twenty-fourth or twenty-fifth day of May, Nineteen hundred and six, a deed of conveyance for said premises was executed by the said Thomas McBride and his wife, to Klementina Batura and Joseph Batura her husband, and was duly delivered, and thereupon the plaintiffs in error took possession of the premises. It did not require much time for them to learn that  
 10 they had been grossly imposed upon, deceived and defrauded by McBride. They shortly afterward elected to retain the property and sue for damages, caused by the deceit. When Batura went to the party, who was occupying the saloon for the George Weidenmayer Company he was only offered Twenty-five dollars rental, instead of the Thirty-five dollars, as represented by McBride to be due for said portion of the premises.

The declaration in this cause contains two counts, the first of which alleges generally the deceit in stating that the monthly rental was One hundred and  
 20 forty-two dollars, whereas in fact it was only One hundred and thirty-two dollars, while the second count alleges specifically that the representation was that the store, known as No. 230 First Street, was under lease to George W. Weidenmayer, Incorporated, a Corporation, for a term of years which would expire on the first day of April, Nineteen hundred and ten, at a reserved monthly rental of Thirty-five dollars; whereas  
 30 the truth was that said lease reserved a rental of Twenty-five dollars only. The plea was general issue.

Upon the trial at the Union Circuit, before the Judge and Jury, the evidence disclosed the false representation, and the sale, and the lease to the Brewing Company was offered in evidence, showing that the instrument was executed on April fourteenth, Nineteen hundred, for a term of five years from April first, Nineteen hundred, with the privilege of an additional term of five years at the expiration thereof, for the  
 40 yearly rental of Three hundred dollars, payable month-

ly. This lease and the payments endorsed thereon appear on pages 65, 66 and 67. It will be noticed that under date of May 22d, 1906, which was four weeks after the contract for the sale of property was made, and a few days before the delivery of the deed, that Three hundred dollars rental, from January 1st, 1905, to January 1st, 1906, was paid, and receipted for by Thomas McBride; also that he, on the same day, endorsed on said lease another receipt for One hundred dollars rental, from January 1st, 1906, to May 1st, 1906. 10

On the trial there were various exceptions taken to the admission and rejection of evidence, and when the plaintiffs' case closed the defendant moved for a non-suit, which was practically denied, the Court stating that he believed no substantial damages had been proven, but that a false representation had been made out as alleged in the declaration, and thereupon directed a verdict for the plaintiff of six cents, to which direction an exception was promptly and properly taken and sealed. 20 The case, as presented before this Court, will merely necessitate the discussion of two points, which appear to us to be very simple, and not in the least involved. They are, that a *prima facie* case was established, and that substantial damages were proven.

#### I. THE PRIMA FACIE CASE.

Upon the trial of the cause the Court seemed to be satisfied that there was evidence showing that the defendant had said to the purchasers that there was a four year lease, for Thirty-five dollars a month (page 95, l. 17). The evidence produced showed that Adolph Reitman saw the defendant in relation to his property on the corner of Pine and First Streets, on the twenty-fifth day of April, 1906 (page 45); that in a conversation Mr. McBride said to him that he wanted Sixteen thousand dollars for the property, and that it brought 40

One hundred and forty-two dollars a month, "He says he got a list. From the Brewery, George Wiedenmayer, has got \$35, and is another man Gilson"; that he wrote everything in a book as McBride told him, which entry in the book was offered in evidence and marked Exhibit "P-6," as appears on page 68. He also testified that McBride told him that Wiedenmayer paid Thirty-five dollars, and that he had a lease  
 10 for four years, when he (Witness) bought the property (page 46). That he told Mr. and Mrs. Batura and showed them the book (page 47); that he told them about the lease that Mr. Wiedenmayer has got, a lease for four years, Thirty-five dollars a month; that he then got a check and paid it in Mr. Stamler's office to Mr. McBride, for Mr. and Mrs. Batura (page 48).

John J. Stamler was a witness and he testified that on April 25th Mr. McBride came to his office, accom-  
 20 panied by Mr. Reitman, and that he prepared an agreement for the sale of the property in question; that prior to the preparing of the agreement he had a conversation with McBride, inquiring in regard to leases, and that McBride told him that there was a lease with the Wiedenmayer Brewery that had about four and a half years to run; that the lease was at first Twenty-five dollars, but that Mr. McBride had collected Thirty-five dollars from the Wiedenmayer Brewery for over a  
 30 year (pages 13 and 14). On the redirect examination of this witness it was attempted to have been proven that the defendant afterwards admitted to the witness that only Twenty-five dollars a month had been received as rental from Wiedenmayer. This offer was overruled and an exception taken (page 19). This was undoubtedly erroneous, for the reason that an admission by the defendant that he had received less than he represented would show the falseness of the representation, which he made at the time of entering into  
 40 the contract.

The agreement for the sale of property was offered in evidence, and appears on pages 59 and 60. This shows clearly that the lease held by Wiedenmayer was a moving factor and an important item in the transaction (page 59, l. 38). The plaintiff, Joseph Batura testified that McBride had told him that Weidenmayer had a lease for four years to run yet; that the corner store rented for Thirty-five dollars a month (page 24); that Reitman told him about the lease, and that there were four years on it yet (page 27). The plaintiff, Klementina Batura testified that Mr. Reitman came to her house and told her the property was for sale (page 35). At Schmidt's office Mr. McBride said that he could not get the lease for her, but he "Tells her he is getting Thirty-five dollars a month from Wiedenmayer for the same" (page 35, l. 7). 10

George Wiedenmayer, the President of the George Wiedenmayer, Incorporated, was produced as a witness, and testified in regard to the lease; he said, that he availed himself of the privilege, under this lease, for that additional five years (page 37, l. 18). It was attempted to be shown what rent he was paying under the renewal, and this was overruled, and an exception taken (page 40). This ruling of the Court is manifestly incorrect, for if the answer shows that he was paying the rent which McBride claims, there could not have been any false representation; he does, however, testify that from April first, 1905, until May 1st, 1906, he paid only Twenty-five dollars rent (page 40, l. 20). There is also an exception on page 41, at line 10, which covers the same point; and an exception on page 42, line 17. Mr. Wiedenmayer was asked if he had surrendered his rights under the lease, and this question was overruled, and an exception taken. This question was proper for the two-fold reason that if there had been a surrender of the lease, prior to the making of the contract, it would have shown that McBride's representation was false and fraudulent, and also that if there had been no surrender, the lease would have 20 30 40

been in effect, and damage would result to the plaintiffs. On the cross-examination of Mr. Wiedenmayer the relation was made very clear; he testified that the occupant Mr. O'Neal was a sub-tenant to the Brewery (page 42, l. 30); that between the first day of April, 1900, and the first day of April, 1905, the Brewery paid nothing directly, and that the same condition existed until Mr. McBride sold the property (page 43). The trial took place on the fifth day of October, 1906, and  
 10 was continued on the eighth day of October, 1906, on which last day Mr. Wiedenmayer testified that O'Neal was still their tenant (page 43, line 40); he was also asked if O'Neal did not pay the rent with his money, which question was overruled, and an exception taken. This is clearly admissible to show that the additional term of five years, provided for in the lease, was then in existence by reason of the George W. Wiedenmayer, Incorporated, continuing in the possession of the prop-  
 20 erty, after the first day of April, 1905, and paying the same rent, reserved in the old lease. A reference to the lease, and the payments endorsed thereon, as appears on page 67, will show conclusively that three days before the deed was delivered, Mr. McBride received from the Brewery Company Four hundred dollars; three hundred dollars for the rent from January 1st, 1906, to January 1st, 1906, and One hundred dollars from January 1st, 1906, to May 1st, 1906. This first payment was for the last three months of the first  
 30 five year term, mentioned in the lease, and for nine months of the additional five years.

All the evidence above cited establishes clearly that on April twenty-fifth a representation was made by Thomas McBride to Adolph Reitman, that the property in question produced a rental of One hundred and forty-two dollars per month, and that the portion thereof, occupied as a saloon, was under lease to George W. Wiedenmayer, Incorporated, at Thirty-five dollars per month, for a period yet to run for about four years;  
 40 that such representation was conveyed by Reitman

to the plaintiffs, and thereupon they gave Reitman Three hundred dollars, which was paid to the defendant, and the contract Exhibit "P-1" was entered into, which expressly stipulated that a portion of the property was subject to a lease, held by George Wiedenmayer (Incorrectly spelled, "Whitemeyer"); that this was followed by the delivery of a deed, one month later, in which it was again stipulated that the premises was subject to a lease, held by George Wiedenmayer, which lease has four years to run from the first day of April, 1906; that as a matter of fact, while McBride represented that he was getting Thirty-five dollars from Wiedenmayer, under the terms of a lease, in fact the lease provided merely for the monthly rental of Twenty-five dollars; so right here we have the element that he made a representation of a fact, material to the transaction, which he knew to be false; that the plaintiffs acted upon such representation, and by reason thereof they suffer loss, at least a loss of Ten dollars for every month in which the lease has a valid existence. 10 20

McBride, himself, entered into the original lease with Wiedenmayer, and he certainly must be bound by the interpretation of that lease, and he must be held to know the purport of the instrument which he signed; the rental he was getting was something strictly and wholly within his own knowledge; the lease not being recorded, which fact, however, the plaintiffs were not permitted to prove (See exceptions on pages 50 and 51). 30

The law on this subject is laid down by our Supreme Court in the case of

*Byard vs. Holmes*, 5 Vr., page 296.

II. THE LEASE WAS OPERATIVE, AND THERE-  
FORE THE PLAINTIFFS' DAMAGE WAS  
FOUR HUNDRED AND SIXTY DOLLARS.

The main cause for complaint is that the trial Judge directed a verdict for six cents, in favor of the plaintiffs, instead of submitting the question of damage to the Jury. The argument between the Court and counsel, as it appears on pages 37, 38 and 39, shows conclusively that  
10 the Court was in error in assuming that the mere statement in a written lease of the privilege for an additional term was not sufficient to take the matter out of the first Section of the Statute of frauds, which provides that a lease for more than three years shall be merely an estate at will, unless there is a writing, signed by the parties. Even if he were correct in that contention, a parole lease for more than three years has been construed by our Courts to create at least an estate from year to year.

20 *Drake vs. Newton, 3 Zab., p. 111.*

But our insistent is not so narrow. Under the lease, offered in evidence, and the testimony given in relation to the condition existing after April 1st, 1905, it is very clear, under the law, that Wiedenmayer is entitled to remain in possession of the premises until April 1st, 1910, paying only Twenty-five dollars a month. The language in the lease is "For the term of five years, with the privilege of an additional five years at the expiration thereof, from the first day of April, A. D., 1900, for the yearly rental of Three hundred dollars, payable monthly" (page 65, l. 22). This clearly expresses that  
30 the first five years, and the additional privilege of five years, was for a rental of Three hundred dollars. There is no other interpretation which can possibly be placed upon the language, and even were we to admit that the provision of Three hundred dollars yearly rental should not apply to the additional privilege, it follows in the  
40 absence of proof of a new agreement on April 1st, 1905,

and the holding over by Wiedenmayer, that he was entitled to hold for five years more at Twenty-five dollars a month.

*Mershon vs. Williams*, 33 Vr., p. 779.

In *Decker vs. Adams* 7 Hal., 99, it was held that if the tenant continues, by consent, without any fixed limit, he becomes a tenant from year to year.

A tenant for years holding over, after the expiration of his term, without any new agreement or lease, is liable for the same rental, that he has formerly paid, and is subject to the terms of the old lease in all respects. 10

*Wood, Landlord and Tenant, Second Edition*,  
Section 465, page 1072.

Where a tenant under a demise for a term holds over after the expiration of the time for which the premises were let to him, without any new demise, the landlord may elect to treat him as a trespasser, or as a tenant holding under the terms of the original lease. 20

*Ibid*, Section 13.

Fraudulent oral representations by a vendor are admissible in evidence to show deceit, or a right to rescind the sale, although a written warranty as to the other qualities of the chattels sold, was made at the time of the sale.

*Cummings vs. Case*, 23 Vr., 77.

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*Wright vs. Remington*, 12 Vr., 48.

*Naumberg vs. Young*, 15 Vr., 331.

To the same effect are

*Carvill vs. Jackson*, 43 Ark., 439.

*Dano vs. Sessions* 65 Vt., 79.

*Graswold vs. Gebbie*, 126 Pa., 353.

*Gustafson vs. Rustemeyer*, 70 Conn., 125.

39 L. R. A., 644.

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The case last cited is quite instructive on the measure of damages in actions on the case for deceit in the sale of lands, and sets forth the two doctrines established, respectively, by the Massachusetts Court and the United States Courts.

*Moses vs. Hutchins*, 102 Mass., 439.  
*Smith vs. Bolles*, 132 U. S., 125.

10 That the measure of damages is the difference between the actual value of the property at the time of the purchase, and its value if the property had been what it was represented or warranted to him.

*Gustafson vs. Rustemeyer (Supra)*.  
 3 *Sutherland on Damages* 389.  
*Vail vs. Reynolds*, 118 N. Y., 297.  
*Krumm vs. Beach*, 96 N. Y., 398.  
*Drew vs. Beall*, 62 Ill., 164.  
*Nysewander vs. Lowman*, 124 Ind., 585.  
 20 *Page vs. Parker*, 43 N. H. 363.  
 80 *Am. Dec.*, 172.  
*Shanks vs. Whitney*, 66 Vt., 405.  
*William McFadden*, 23 Fla., 143.

That the vendee has the right to rescind, or may retain the land and recover damages for the deceit in a proper action.

30 *Ives vs. Carter*, 24 Conn., 392.  
*Krumm vs. Beach (Supra)*.  
*Vail vs. Reynolds (Supra)*.  
*Pryor vs. Foster*, 130 N. Y., 171.  
 See *Sedgw. on Damages*, page 559.  
 3 *Sutherland, Damages, Sec.* 1171.

A lessee, after accepting a lease and entering into possession of the premises, upon discovering a fraudulent representation by the lessor of a material fact, is not  
 40 compelled to give up the premises and rescind the lease,

but in an action against him for the rent may set up his damages from such fraudulent representations.

*Dennison vs. Grove*, 23 Vr., 144.

In the case of *Pryor vs. Foster* (*Supra*) the plaintiff entered into a lease for the term of fifteen months and five days, and the defendant represented that the furnace in the house was good, and required from eight to ten tons of coal per year. Judgment was rendered in the lower Court in favor of the plaintiff, and when the case was taken to the Court of Appeals, it was held that the measure of damages was the difference in the real value of the premises, as they were, and as they would have been had they been as represented. The plaintiff had the right to make as good a bargain as he could, and was entitled to the full benefits thereof. 10

In an action in tort for lodging tan-bark in the pool of the plaintiff's dam, it was held that it was competent to produce evidence to show not only the damage to the land itself, but also to the profits derived from the land; and that evidence of both methods of computing the damages should have been admitted, and that in charging the Jury the Court should have instructed the Jury, so as not to give double damages. That in one event the measure of damages might have been the cost of the removal of the tan-bark, and in the other the difference in value merely. If there be different modes of measuring the damages, depending on the circumstances, the proper way is to hear the evidence and to instruct the Jury afterwards according to the nature of the case. 20 30

*Seely vs. Alden*, 61 Pa., 302.  
100 Am. Dec., 642.

An action was brought in deceit to recover damages on account of the sale of stock for certain fraudulent and false representations. On the trial the Jury were charged as to the law as follows: "Measure of recovery is generally the difference between the contract price 40

and the reasonable market value, if the property had been as represented to be." Chief Justice Fuller, in writing the opinion, said that this was error and that the question is not what the plaintiff might have gained but what he had lost by being deceived in the purchase; that the defendant was liable to respond in such damages as naturally and proximately result from the fraud. He was bound to make good the loss sustained, such as the moneys the plaintiff had paid out, and any other outlay  
 10 legitimately attributable to the defendant's fraudulent conduct; but this liability did not include the expected fruits of an unrealized speculation.

*Smith vs. Bolles (Supra).*

The rule laid down by the United States Supreme Court is followed by our Court of Errors and Appeals in the case of

*Crater vs. Binninger, 4 Vr., 513.*

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In that case the defendant solicited the plaintiff to become a member of a proposed oil company, and represented to him that the land which had been purchased cost Twenty-eight thousand dollars, and that Four thousand dollars would be required as a working capital, and that he would sell a one-eighth interest to the plaintiff for Four thousand dollars. Relying upon the representation, as to the amount paid for the property, the  
 30 plaintiff invested the Four thousand dollars, and afterwards advanced an additional sum of Five hundred dollars. Part of the land was sold for Sixteen thousand dollars, and the plaintiff paid his one-eighth part, or Two thousand dollars. The scheme was a failure, and the plaintiff discovered that the original cost of the land was Eighteen thousand dollars, instead of Twenty-eight thousand dollars, and he instituted an action in deceit. The trial Court charged the jury. "That the proper measure of damages was the entire loss sustained by the  
 40 plaintiff in this transaction, into which he was inveigled by the

fraud of the defendant." On the trial no evidence was given as to the value of the lands, still held in trust for the plaintiff and others, and no allowance was made in the direction of the Court to the Jury, for the value of this land, and for that reason alone the verdict was reversed. Chief Justice Beasley, in writing the opinion, said that the charge of the Judge was entirely unobjectionable, but that it was error not to embrace in the charge the subject, as to the value of the remaining lands. He further says: "Where the sale itself is the product of fraud the vendee may either repudiate the contract, or claim, by way of damages the difference between the price paid by him, and the real value of the property, which he has acquired." He cites the case of *Headley vs. Baxendale*, *Exch.*, 341, and Mr. Greenleaf on evidence stating: "The damage to be recovered must always be the natural and proximate consequence of the act complained of." 10

In the same case there is an opinion written by Chancellor Zabriskie, which to me seems to be not quite so involved in its argument and perhaps more to the point, in so far as it applies to the measure of damages in the case at issue; he says: "The proper rule upon principles of equity and justice to be applied in all cases of fraudulent misrepresentations in sales, is to assess damages to the amount of the loss that was occasioned by the mirepresentations." 20

In the case at issue there are undoubtedly two methods upon which damages might have been granted in favor of the plaintiff had the case been given to the Jury for consideration; first, Whether the Baturas would have paid the amount of Sixteen thousand dollars for the property had they known that the rental was not as great as represented; and, secondly, The loss of rents. Of course it is quite natural that these two items of damage might be considered as over-lapping one another, but the case should have been submitted to the Jury, and the two methods of computation left to the Jury, with proper instructions from the Court; there is no doubt that if the 30 40

lease were a valid lease to run to April first, Nineteen hundred and ten, that after the plaintiffs became the owners of the property, the lease would run for forty-six months, at a rental of Ten dollars less than represented by McBride. There is evidence that he represented to the parties that he was collecting Thirty-five dollars, and his counsel made that admission in open Court (page 16, l. 4). In addition to this Four hundred and sixty dollars, which the plaintiffs will lose in rents, there would

10 have been the additional question whether the value of the property itself would have been in any manner diminished by reason of the property bringing Ten dollars less per month than as represented. The ten dollars per month would make One hundred and twenty dollars per year, and as ordinarily figured in real estate transactions, by reason of this reduction in rents, the property would undoubtedly be worth from One thousand to twelve hundred dollars less than paid by the Baturas; but there was

20 no expert evidence produced by the plaintiff to show that the rental value of the property would affect the value of the property, although I believe this is something in the nature of common knowledge, and might have been considered by the Jury, had the Court permitted the case to go that far. In any event if this is not so, the only one prejudiced in that omission would be the plaintiffs, and as the evidence before the Court was conclusive that the representation falsely and fraudulently made by McBride was as to the rental received

30 from Wiedenmayer, under lease, it might be that evidence upon any other point in the consideration of damages would be incompetent and irrelevant. It is clear that the damage, which most reasonably was in contemplation of the minds of the parties, was the rent received under the Wiedenmayer lease, and I doubt not but that the rents received from this lease, together with the rents received from the remainder of the property were the moving cause in the consummation of the articles of agreement entered into on April twenty-fifth, Nineteen

40 hundred and six.

## CONCLUSION.

The main point for consideration is whether, at the time of the making of the agreement of April twenty-fifth, Nineteen hundred and six, and at the time of trial, Wiedenmayer was in possession of a portion of the premises in question, under and by virtue of the lease appearing on page 65 of the printed case. The term created is in the following language: "For the term of five years, with the privilege of an additional term of five years at the expiration thereof, from the first day of April A. D., Nineteen hundred, for the yearly rent of Three hundred dollars, payable monthly." This is the language used by the defendant, Thomas McBride, and must be construed against him. 10

The clause for the yearly rental of Three hundred dollars, payable monthly, is so placed that it must be applied in any manner to both the original term of five years and the additional term of five years. The argument between counsel and the Court, as appears on pages 37, 38, 39 and 40 of the printed case, will show that the trial Judge was laboring under the misapprehension that the statute of frauds rendered the additional term of five years, expressed in the lease, void, or an estate at will. Mr. Wiedenmayer, the President of George W. Widenmayer, Incorporated, on his cross examination, said, that the payment of twenty-five dollars monthly was made by "Our tenant, Mr. O'Neal, from the first day of April, Nineteen hundred"; that the premises were sub-let; and that the same condition of parties continued from the first day of April, Nineteen hundred and five, until the first day of April, Nineteen hundred and six, which had existed during the entire period of years. On re-direct he said that O'Neal is still their tenant (pages 42 and 43). Perhaps the endorsements of payments of rent upon the lease itself show most conclusively the continuance in possession, and the payment of rent entitles and binds the tenant for the full term expressed in the lease. 20 30

*Mershon vs. Williams (Supra).*

Since this Court has already determined, by its decisions, that Wiedenmayer is bound as a tenant at the rental of Twenty-five dollars per month, until April first, Nineten hundred and ten; and also what the measure of damages would be, it necessarily follows, that the trial Court usurped the province of the Jury in directing a verdict for six cents; and therefore

10 II. THE JUDGMENT SHOULD BE REVERSED  
AND A VENIRE DE NOVO AWARDED.

Respectfully submitted,

JOHN J. STAMLER,

SAMUEL KOESTLER,

*Of Counsel with Plaintiffs in Error.*

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NEW JERSEY, ss.

THE STATE OF NEW  
JERSEY, to the Chief Jus-  
tice and other Justices of our  
Supreme Court of Judica-  
ture.

10

[SEAL.]

GREETING:

For as much as in the rec-  
ord and proceedings, and  
also in the giving of judg-  
ment in a certain plaint,  
which was in our said Supreme Court of Judicature,  
before you, between Klementina Batura and Joseph  
Batura, her husband, plaintiffs, and Thomas McBride, 20  
defendant, in an action in tort, manifest error hath in-  
tervened, to the great damage of the plaintiffs, Klem-  
entina Batura and Joseph Batura, her husband, as it  
is said:

We being willing that the error, if any there be,  
should in due manner be corrected, and full and speedy  
justice done to the parties aforesaid in this behalf, do  
command you, that if judgment be thereupon given  
and affirmed, then you distinctly and openly send, 30  
under your seal, the record and proceedings aforesaid,  
with all things touching the same, to our Judges of the  
Court of Errors and Appeals in the last resort in all  
causes, at Trenton, on the thirty-first day of October  
instant, together with this writ, that the record and  
proceedings aforesaid being inspected, we may cause  
to be further done thereupon, for correcting that error,  
what of right, and according to the law and custom of  
the State of New Jersey ought to be done.

Witness: Our Chancellor and President Judge of 40

our said Court of Errors and Appeals, at Trenton aforesaid, the eleventh day of October, A. D., Nineteen hundred and six.

L. D. DICKINSON,  
*Clerk.*

JOHN J. STAMLER,  
*Attorney.*

10 The within writ was presented to me, and it is ordered that the Clerk prepare return thereof, according to law.

Dated October 30th, 1906.

WILLIAM S. GUMMERE,  
*C. J.*

20 The answer of the Justice of the Supreme Court of the State of New Jersey within named. The record and proceedings whereof mentioned is within made, with all things touching and concerning the same, we do certify to the Court of Errors and Appeals of said State, in a certain schedule to this writ annexed, as within we are commanded.

(L. S.) WILLIAM S. GUMMERE,  
*C. J.*

30 Pleas before the Justices of the Supreme Court of the State of New Jersey, of the twenty-fifth day of July, A. D., Nineteen hundred and six.

WITNESS:

WILLIAM S. GUMMERE, ESQUIRE,  
*Chief Justice.*

WILLIAM RIKER, JR.,  
*Clerk.*

JOHN J. STAMLER,  
*Attorney of Plaintiffs.*

40 WILLIAM D. WOLFSKEIL,  
*Attorney of Defendants.*

UNION COUNTY, ss.

Thomas McBride, the defendant in this suit, was summoned to answer unto Klementina Batura and Joseph Batura, her husband, the plaintiffs therein, in an action in tort, and thereupon the plaintiffs by John J. Stamler, their attorney, complain :

For that before and at the time of the committing of the grievances by the said defendant, as hereinafter mentioned, the said defendant was the owner and possessor of certain houses and lots numbered Two hundred and twenty-four (224), Two hundred and twenty-six (226), Two hundred and twenty-eight (228) and Two hundred and thirty (230) First Street, in the City of Elizabeth, County of Union and State of New Jersey; and the said defendant being desirous of selling and disposing of said houses and lots, heretofore to wit, on the twenty-fifth day of April, Nineteen hundred and six, at the City of Elizabeth, in the County of Union aforesaid, the said defendant wrongfully, contriving and intending to deceive, defraud and injure the said plaintiffs in this behalf, and meaning that they, the said plaintiffs should act thereupon, then and there falsely, fraudulently and deceitfully represented and asserted to the said plaintiffs that the said lots of land known as numbers Two hundred and twenty-four (224), Two hundred and twenty-six (226), Two hundred and twenty-eight (228) and Two hundred and thirty (230) First Street aforesaid, then and there produced an income and rental of One hundred and forty-two dollars each and every month; whereupon on said day and year last aforesaid, at the City of Elizabeth, and County of Union aforesaid, the said plaintiffs, confiding in and believing the said representations and assertions of the said defendant, to be true, at the special instance and request of the said defendant, bargained with him, the said defendant, to buy of him, the said defendant, said houses and lots known as numbers Two hundred and twenty-four (224), Two hundred and twenty-six (226), Two hundred and twenty-eight (228) and Two hundred and thirty (230) First Street, in the City of Elizabeth

aforesaid, at and for a large sum of money, to wit, Sixteen thousand dollars; and the said defendant by then and there falsely, fraudulently and deceitfully pretending and representing to the said plaintiffs, that the said false, fraudulent and deceitful representation, of the said defendant, was true, then and there entered into a contract with the said defendant, and subsequently, to wit, on the twenty-fifth day of May, Nineteen hundred and six, sold said premises to the said plaintiffs, at and for the said  
10 sum of money, to wit, Sixteen thousand dollars. And the said plaintiffs afterwards, to wit, on the said twenty-fifth day of May, Nineteen hundred and six, at Elizabeth, in the County of Union aforesaid, paid the said defendant, the said sum of money for the same; whereas in truth and in fact, the said houses upon said land and lots had not been, nor were they before or at the time of the making of said false representations and assertions, producing an income and rental of One hundred and forty-two dollars for each and every month, but that the income and rental of said  
20 houses for each and every month was much less, to wit, the sum of One hundred and thirty-two dollars per month, as the said defendant, at the time of his making his said false and deceitful representations and assertions, well knew, and intended that the said plaintiffs should act thereon; and the said plaintiffs further say that the said defendant, by means of the premises, to wit, on the said twenty-fifth day of May, Nineteen hundred and six, at Elizabeth, in the County of Union aforesaid, falsely and  
30 fraudulently deceived the said plaintiffs on the said sale; and the said plaintiffs have sustained great loss of rents, income and moneys, to wit, the sum of Three thousand dollars, and therefore they bring their suit, &c.

And also for that before and at the time of the committing of the grievances by the said defendant, hereinbefore mentioned, the said defendant was the owner and possessor of all those lots, tracts or parcels of land and premises, situate, lying and being in the City of Elizabeth, in the County of Union and State of New Jersey, known  
40 as houses and lots numbered Two hundred and twenty-

four (224), Two hundred and twenty-six (226), Two hundred and twenty-eight (228) and Two hundred and thirty (230) First Street, Elizabeth, New Jersey; and the ground or first floor and store of that portion of said premises known as number Two hundred and thirty (230) First Street, was then and there occupied and used as a saloon; and the said defendant being desirous of selling and disposing of the said land and premises and the rents, issues and profits thereof, heretofore, to wit, on the twenty-fifth day of April, Nineteen hundred and six, at Elizabeth, in the County of Union aforesaid, wrongfully and injuriously contriving and intending to deceive, defraud and injure the said plaintiffs in this behalf, and meaning that they, the said plaintiffs should act thereon, then and there falsely, fraudulently and deceitfully represented and asserted, to the said plaintiffs, that said premises produced a monthly income or rental of One hundred and forty-two dollars, and that the part or portion of said premises known as the ground or first floor and store of number Two hundred and thirty (230) First Street was under lease to George W. Wiedenmayer, Incorporated, a corporation, for a term of years which would expire on the first day of April, Nineteen hundred and ten, at a reserved monthly rental of Thirty-five dollars; whereupon, heretofore, to wit, on the day and year last aforesaid, at Elizabeth, in the County of Union aforesaid, the said plaintiffs confiding in and believing the said representations and assertions of the said defendant, to be true, at the special instance and request of said defendant, bargained with him to buy of him, the said defendant, all those lots, tracts or parcels of land and premises, situate, lying and being in the City of Elizabeth, County of Union and State of New Jersey, known as houses and lots numbered Two hundred and twenty-four (224), Two hundred and twenty-six (226), Two hundred and twenty-eight (228) and Two hundred and thirty (230) First Street, Elizabeth, New Jersey, at and for a large sum of money, to wit, the sum of Sixteen thousand dollars.

And the said defendant by then and there falsely,

fraudulently and deceitfully pretending and representing to the said plaintiffs that the said false, fraudulent and deceitful representations and assertions of the said defendant were true, caused said plaintiffs to enter into a contract for the purchase of said lands and premises for the sum of Sixteen thousand dollars, and afterwards, to wit, on the twenty-fifth day of May, Nineteen hundred and six, the said plaintiffs did buy of the said defendant, said lands and premises, and did pay to the said defendant, the said sum of money, to wit, Sixteen thousand dollars; whereas in truth and in fact, all of said lands and premises had not been, nor were they, before or at the time of the making of said false representations and assertions, produced the sum of One hundred and forty-two dollars income or rental per month, but had been and were producing much less, to wit, the sum of One hundred and thirty-two dollars rental and income per month; and whereas in truth and in fact that part or portion of said lands and premises known as the ground or first floor and store of number Two hundred and thirty (230) First Street had not been, nor were they before or at the time of the making of said false representations and assertions, under lease at a reserved rental of Thirty-five dollars per month, but on the contrary that part or portion of said lands and premises known as the ground or first floor and store of number Two hundred and thirty (230) First Street had been, and were before and at the time of the making of said false and fraudulent representations, under lease to George W. Wiedenmayer, Incorporated, a corporation, for a term of years which would not expire until April first, Nineteen hundred and ten, at a certain reserved rental of Twenty-five dollars, for each and every month of said term, as the said defendant, at the time of making his said false and deceitful representations and assertions, well knew; and the said plaintiffs further say that the said defendant, by means of the premises, to wit, on the twenty-fifth day of May, Nineteen hundred and six, at Elizabeth, in the County of Union aforesaid, falsely and fraudulently deceived the said

plaintiffs on the said sale; by means thereof, the said plaintiffs have lost and been deprived of great gains, issues and profits from said lands and premises, and have paid to the said defendant a large sum of money in excess of the real and actual value of said lands and premises, to wit, the sum of Three thousand dollars, and therefore they bring their suit, &c.

And the said Thomas McBride, by W. D. Wolfskeil, his attorney, comes and defends the wrong and injury, when, &c., and says, that he is not guilty of the said supposed grievances above laid to his charge, or any or either of them, in manner and form as the said Klementina Batura and Joseph Batura, her husband, have above thereof complained against him. 10

And of this the said Thomas McBride puts himself upon the country, &c.

Therefore have a Jury thereupon come before our Chief Justice, or some other Justice of the Supreme Court of the State of New Jersey, or some Circuit Judge, at a Circuit Court to be holden at Elizabeth, in and for the County of Union, on the first Tuesday of October, in the year of Our Lord, Nineteen hundred and six, by whom, &c., and the same day is given to the parties aforesaid for, &c. 20

And now at this day, to wit, the tenth day of October, A. D., Nineteen hundred and six, before our said Supreme Court, at Trenton, comes said plaintiffs by their attorney, aforesaid, and the Justice before, &c., having first sent hither his record here before him with his words, to wit:— 30

Afterwards, that is to say, on the fifth and eighth days of October, Nineteen hundred and six, at a Circuit Court held at Elizabeth, in and for the County of Union, by his Honor, Benjamin A. Vail, Circuit Court Judge, to whom the above stated cause was referred by his Honor, Francis J. Swayze, the Justice of the Supreme Court of the State of New Jersey, presiding over said Circuit, according to the form of the statute in such case made and provided, comes as well the within named plaintiffs as the within 40

named defendant, by their respective attorneys within mentioned, and the jurors of the Jury, whereof, mention is within made, being summoned also come, who to speak the truth of the matters within contained, being chosen, tried and sworn upon their oaths, say, that the defendant is guilty of the grievances in the manner and form as the said plaintiffs have within complained against said defendant, and they assess the damages of the plaintiffs against the said defendant on the occasion thereof, in the sum of Six cents.

10 B. A. VAIL,  
*Judge.*

It appearing to the Court that the above stated cause was duly tried, at the October Term, Nineteen hundred and six, of the Union County Circuit of the New Jersey Supreme Court, and the verdict having been rendered in favor of the said plaintiffs and against the said defendant, as appears by the postea, and it further appearing that due notice of this application has been given to William D. Wolfskeil, Esq., the Attorney of the defendant.

20 It is thereupon on this tenth day of October, Nineteen hundred and six, Ordered that the plaintiffs be allowed to file the Circuit records and postea in the above stated cause, and that judgment forthwith be entered in favor of the plaintiffs and against the defendant in the sum of Six cents.

30 B. A. VAIL,  
*Judge.*

Therefore it is considered that the said plaintiffs do recover against the said defendant their said damages by the Court, in form aforesaid, found to be the sum of Six cents. Judgment signed the fifth day of October, Nineteen hundred and six.

40 WILLIAM S. GUMMERE,  
*C. J.*

I, William Riker, Jr., Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of the judgment entered in the above stated cause, as the same remains of record in my hands.

(L. S.)

In Testimony Whereof I have set my hand and the seal of said Court, at Trenton, this thirtieth day of October, A. D., Nineteen hundred and six.

WILLIAM RIKER, JR., 10  
*Clerk.*

20

30

40

# New Jersey Supreme Court.

## Union County Circuit.

10 KLEMENTENA BATURA AND JOSEPH  
BATURA,

*Plaintiffs,*

*vs.*

THOMAS McBRIDE,

*Defendant.*

*In Tort.*

20 Transcript of shorthand notes of testimony taken  
on the fifth day of October, 1906, before Hon. Benjamin A. Vail, Judge, and a Jury.

THOMAS McBRIDE, sworn.

*Direct Examination.*

By MR. STAMLER:

Q. Mr. McBride, where do you live?

A. I live at 123 Bond Street.

Q. This city?

30 A. Yes, sir.

Q. How long have you live in the City of Elizabeth?

A. 33 years, pretty closely.

Q. You are acquainted with the property known  
as 224, 226, 228 and 230 First Street?

A. Yes, sir.

Q. Did you ever own the property?

A. Yes, sir.

Q. Did you build the property?

40 A. Yes, sir.

Q. Did you build that property at the same time? All the buildings at the same time?

A. No, sir.

Q. When did you build the corner house?

A. About 1885.

Q. That is the property which the saloon is in now?

A. Yes, sir.

Q. Describe it.

A. Three story house, 28x44. 10

Q. What does it consist of on the first floor?

A. Saloon.

Q. On the second floor?

A. Tenements.

Q. How many rooms?

A. Eight rooms on the second floor.

Q. How many rooms? I mean on the third floor?

A. Eight.

Q. 226, 228 and 230 is all one house, isn't it? 20

A. No, sir.

Q. Which house did you build next?

A. That is the last one.

Q. When did you build 226 and 228?

A. About 1881, and the other one I think is about 1883.

Q. And 230?

A. 1885.

Q. 230 you built in 1885? 30

COURT: What is the use of that? Under this declaration you declare that there was a false representation.

MR. STAMLER: It appears to me that I may show to this jury—I want to show to this jury that we paid \$16,000 for this property upon the representation that the property was bringing a rental of a \$142, when as a matter of fact, the property 40

didn't bring that much and we will prove that the property is worth less money, because greater the rental the greater the value of the property.

MR. WOLFSKEIL: The measure of damages is the difference between the two rentals.

COURT: Why, of course.

- 10 Q. 226 and 228 is one house, isn't it?  
A. No, sir.  
Q. You have got a double house there?  
A. Yes, sir.  
Q. Which is the double house?  
A. 226.  
Q. 226 and 228?  
A. No, sir, not 228.  
Q. 224 and 226 is a double house?  
A. No, sir, the double house takes in a portion  
20 of 224.  
Q. How deep is your land?  
A. 75 feet.  
Q. 75 feet on Pine Street?  
A. Yes, sir.  
Q. And a hundred feet on First Street?  
A. Yes, sir.  
Q. Is that right?  
A. Yes, sir.  
Q. How many rooms does your house consist of  
30 in 226?  
A. Ten rooms.  
Q. Any store?  
A. Two stores.  
Q. They include 228?  
A. No, sir.  
Q. What have you on 228?  
A. Five rooms and a store.  
Q. There is a two story building?  
A. Yes, sir.  
40 No Cross Examination.

(An agreement for the sale of property between Thomas McBride and Klementena Batura and Joseph Batura, dated April 25, 1906, recorded April 28, 1906, in Bk. 465 Deeds, on pages 142 and so forth, for Union County, is offered in evidence by the Plaintiff, and marked Exhibit P1. Plaintiff also offers Deed, marked Ex. P2).

JOHN J. STAMLER, Sworn.

*Direct Examination.*

10

By MR. SCHLEIMER:

Q. You are an attorney and counsellor-at-law in this State?

A. I am.

Q. Practicing in the City of Elizabeth?

A. I am.

Q. And have been practicing here how long?

A. About three and three-quarter years.

20

Q. Do you know the defendant?

A. I know him personally, yes, sir.

Q. Know the plaintiffs, Klementena Batura and Joseph Batura?

A. I know them.

Q. Have you represented them in any matter in the last year, connected with the subject matter of this suit?

A. I have.

Q. What was that?

30

A. On the 25th of April, Mr. McBride came into my office, accompanied with Mr. Adolph Reitman, and I was requested by Mr. McBride and Mr. Reitman to prepare an agreement for the sale of property known as 224, 226, 228 and 230 First Street, Elizabeth, N. J. Prior to the preparing of this agreement, I made inquiries of Mr. McBride, and asked him whether or not there were any leases against the property. He informed me that he had given a lease some five years

40

ago to the Wiedenmayer Brewery for five years, and with an additional privilege of five years more, and that the lease had about four and a half years more to run. The first five years the rental was to be \$25 only per month, and that for the remainder of time it was \$35, and that he had collected \$35 from the Wiedenmayer Brewery as its rent per month for over a year or so. He said he was on the second term. I asked Mr. McBride for the lease and he told me he had it  
10 at home and would deliver it to Mr. Batura or Mrs. Batura or Mr. Reitman. I also, at the time, made inquiries of Mr. McBride as to how much each individual front brought as rental value. I also inquired when the terms expired of each tenant, and he gave me a list. No, he did not give me a list at the time. He said that he didn't recollect the actual time, but would give a list to the owners of the property. I had nothing to do with passing any title to this property, and I heard nothing more of this transaction  
20 until I called to see Mr. McBride and informed him that Mr. Wiedenmayer, Inc., the brewery, had given Klementena Batura a check for the brewery.

Q. When was that, when the title had passed?

A. That was passed. June, 1906, I told him that the brewery only offered \$25 a month, and how that was, and he said, No, \$35 was the amount they should pay. I asked him at that time if he would come to Court and swear to that fact and he told me that he  
30 would. I asked him at that time for his lease, and he told me that he had made a thorough search for it and couldn't find it. Afterwards a suit was instituted.

MR. WOLFSKEIL: I object.

MR. STAMLER: I withdraw that information.

Q. Did you afterwards see Mr. McBride?

A. Yes, sir, in the District Court, and there  
40 under oath, he said in my presence—

MR. WOLFSKEIL: I object.

MR. SCHLEIMER: I submit that is proper what he said, whether he said it under oath or not with reference to the contract.

COURT: You have got to show what representations were made and that those representations were false, and by showing that, then you are entitled to damages. You are not producing the best evidence. That witness is the best evidence. 10

MR. SCHLEIMER: I withdraw that question.

Q. Where did you have this second conversation with Mr. McBride, that you tell us about?

A. I called at his house and he came out doors with me, and we walked down towards First Street, but we didn't go to any house. The conversation was on the street. I also had a conversation with him in the District Court room, right here in the Court House. He again told me that at that time the first five years had expired and that he had made an arrangement with the Wiedenmayer Brewery to pay \$35 a month rent for the property. 20

Q. That was in the District Court?

A. That was in the District Court room, and I want to say this, that Mr. McBride also made that statement to me in my office.

Q. When was this in your office?

A. That was on the 25th of April, in the office. 30

Q. The first representation?

A. It is the second time that I had a conversation with him—was first Friday in June.

COURT: That was after the deed was given?

A. That was after the deed was given.

COURT: How could representations made after the deed was given be deceit? 40

MR. STAMLER: We claim that this —

MR. WOLFSKEIL: To simplify this case, we will admit that Mr. McBride did make that statement—that the rent was \$35 a month, and that he collected it for fourteen months.

COURT: Now you have got to show that the representation which he made was false.

10 Q. Who was present in your office on the 25th day of April, when Mr. McBride made the representation?

A. Mr. Reitman, who was acting as agent.

Q. That was the day the agreement was made?

A. Yes, sir.

Q. Was that prior to the making of the agreement?

A. It was prior to the time of the making and signing of this agreement.

Q. I want to have this marked for identification. Was that drawn in your office?

20 A. That was made in my office on that day.

(Marked p. 3 for identification).

Q. Do I understand you to say that Mr. McBride told you that he had made a search for the lease and couldn't find it?

A. Yes, sir.

BY MR. WOLFSKEIL:

Q. When?

30 A. My recollection is that on the 25th day of April he said that he would look for it.

BY THE COURT:

Q. What is the date of the original contract?

A. 25th of April, 1906.

BY MR. WOLFSKEIL:

Q. What date did you say?

A. 25th of April, 1906.

40 COURT: What statements he made afterwards, I don't see how that could have any effect.

MR. WOLFSKEIL: I move that all conversations and alleged representations made after the 25th day of April be stricken from the record.

COURT. I don't see how any statements made afterwards could effect this case.

MR. STAMLER: He says to us, I have a lease. We request it. He says, I will produce it, I have it home. The lease is not produced, and he afterwards says, I made a search for that lease and could not find it. We want on the record the fact that he, by his own statement, could not comply with the promise to produce the lease. 10

MR. WOLFSKEIL: My motion is that all conversations or alleged representations made after the 25th of April, concerning which the witness has testified to, be stricken off.

COURT: It is on the record now, and if they don't show that it is competent, I shall strike it out. 20

MR. STAMLER: It may be a very important part of the case and we will not consent to its being stricken out.

*Cross Examination by Mr. WOLFSKEIL.*

Q. On the 25th of April —

MR. WOLFSKEIL: Seems to me that it is just a trifle unfair to the defendant not to have that motion acted on now. 30

MR. STAMLER: We submit to your Honor, that if Mr. McBride made these false representations and after the title passed, he re-affirmed them, it goes a great ways. Here is a case of fraud and deceit. We have a right to show that by his action and by his words, he continued to re-affirm the deceit he practiced before we entered into this agreement. 40

COURT: I understand that the ground of your complaint is that you thought this property was rented for \$35 a month and that in fact it rents for \$25 a month. Now, Mr. Wolfskeil has admitted that, and it is on record.

MR. WOLFSKEIL: We will continue it this moment and say that we got \$35 a month for fourteen months.

10 MR. STAMLER: From the Geo. Wiedenmayer Brewery, Incorporated?

COURT: The gist of your complaint is that they told you that property was renting for \$35 a month, and they say now that they did say so and are willing thereby for it to go on the record, and that proves your allegation. He has made his offer. Strike out all the testimony that has been given with reference to conversations subsequent to the signing of this contract.

20

BY MR. SCHLEIMER:

Q. Was there anything said in your office regarding a limited time in which \$35 was being paid for that saloon?

30 A. Mr. McBride said that for a year or more—I don't remember the months—that he has received from the Wiedenmayer Brewery \$35 a month for the rent of the store, and that the lease was made to expire about four or four and a half years. That is my recollection.

Q. Did he or not say what the rent of that saloon would be for the following four and a half years?

A. He said that the new rent had commenced at \$35 a month, and that it is to continue until the expiration of the term. I asked him absolutely as to that, and he said there that a new agreement had been made and Mr. McBride subsequently said —

Q. Same day?

40 A. After the deed had passed.

MR. WOLFSKEIL: I object.

COURT: I overrule the question.

MR. SCHLEIMER: An admission that he only received \$25 a month. We offer to prove the conversation of the defendant after the passing of the deed to the same effect.

COURT: Don't make any difference what he said afterwards.

MR. STAMLER: Your Honor will please allow us an exception. 10

(Whereupon the plaintiff, by his counsel, prays a bill of exception, which is hereby allowed and sealed accordingly).

B. A. VAIL, (SEAL).

By MR. WOLFSKEIL:

Q. On the 25th day of April, I understand you to say, that Mr. McBride and Mr. Reitman came to your office? 20

A. Yes, sir.

Q. And you said on that occasion you drew this agreement?

A. I did, sir.

Q. Is that in your writing?

A. Not in my writing, no.

Q. Is the acknowledgment in your writing?

A. It was prepared under my supervision and the witness' signature, and prepared by my stenographer. 30

Q. And on that day by this paper, a contract was made between Mr. McBride and Klementena Batura and Joseph Batura, for the sale of property on the corner of First and Pine Streets of this City?

A. And other property.

Q. Three lots on the corner?

A. Yes, sir.

Q. That contract was fully completed on that day, wasn't it? 40

A. Money paid in my office and fully completed at that time.

Q. How much money was paid in your office at that time?

A. \$300.

Q. You put this statement in here, "The premises are conveyed subject to a lease of the corner store, held by George Wiedenmayer of the City of Newark?"

A. Yes, sir.

10 Q. And that was put in there by you as the result of the conversation with Mr. McBride, is that true?

A. Yes, sir.

Q. You asked Mr. McBride whether or not there were any leases on the property?

A. Yes, sir.

Q. He told you that George Wiedenmayer, of Newark had a lease?

A. He told me that George Wiedenmayer, the owners of the brewery, had a lease.

20 Q. You said that in your direct examination. The Wiedenmayer Company—you mean by that—as you put it in here—George Wiedenmayer?

A. At that time, I simply knew George Wiedenmayer, the brewer.

Q. You didn't know he was a company?

A. I did not, sir.

Q. And Mr. McBride told you that that lease had been made over five years before, didn't he?

A. He told me it was made in 1900.

30 Q. And he said the rent reserved in the lease when it was made was \$25 per month?

A. Yes, sir.

Q. He told you the lease ran for five years?

A. For five years, with an additional privilege of five years.

Q. He explained to you at that time that the first five years had expired?

A. He did.

40 Q. And he told you that the first five years had

expired in 1905 in April, didn't he?

A. Yes, sir.

Q. And he also told you that when the first five years expired he raised the rent to \$35, did he not?

A. Yes, sir.

Q. This was on the 25th of April, 1906? He told you that since April, 1905, until the time when he was speaking to you he had been receiving \$35 a month?

A. He told me that for over a year.

Q. He told you that he had the lease in renewal again? 10

A. That is what he said.

Q. He told you that the renewal began in 1905?

A. I don't say that.

Q. He said that for —

A. Said for a year or more.

Q. This was on the 25th of April, 1906.

A. Yes, sir.

Q. And told you that for a year or more he had been receiving \$35 a month? 20

A. Yes, sir.

Q. And told you that Frank O'Neal, the occupant of the saloon, paid him rent?

A. No, sir; didn't ask him.

Q. Didn't ask when you —

A. No, sir; didn't.

Q. Did he say so?

A. No, sir; didn't.

Q. Was Frank O'Neal's name mentioned at that time? 30

A. No, sir; not mentioned then.

Q. In your office on that day, his name was not mentioned?

A. No, sir.

Q. But did tell you for over a year he had received \$35 a month?

A. Yes, sir.

Q. Did you make any inquiries of any person to verify his statement? 40

A. Mr. Reitman was there and said to him, Does Mr. Batura understand the situation? Mr. McBride said, I have told them the same thing I am telling you.

Q. That is not the question. The stenographer will repeat it.

(Question repeated by stenographer).

A. Not until title passed.

Q. After you took the papers you made inquiries?

A. I did, sir.

10

THOMAS MCBRIDE recalled.

*Direct Examination by MR. STAMLER.*

Q. I will ask you to look at that paper and see if you know what that is?

A. Yes, sir; that is my signature.

Q. You recall signing that?

A. Yes, sir.

Q. Did you see George Wiedenmayer sign that?

20

A. Yes, sir.

(Lease marked Exhibit, p. 4, and between Thomas McBride and George Wiedenmayer, Incorporated, dated April 14, 1900, is offered in evidence by the plaintiff).

*Cross Examination.*

Q. Mr. McBride, this lease was made by you with George Wiedenmayer, Incorporated, on the 14th of April, 1900, and reads for a term of five years, with a privilege at the expiration thereof, from the first day of April, A. D., 1900, for the yearly rental of \$300, payable monthly?

30

MR. SCHLEIMER: The lease speaks for itself, if the Court please.

MR. JOSEPH BATURA, sworn.

*Direct Examination by MR. STAMLER.*

Q. Where do you live, Mr. Batura?

40

A. 111 Pine Street.

- Q. Do you know Mr. Reitman?  
A. Yes, sir.  
Q. Do you know Mr. McBride?  
A. Yes, sir.  
Q. Did you ever have any business transactions with Mr. McBride?  
A. No, sir.  
Q. You don't understand?  
(Questions put through Court Interpreter).  
Q. Did you have any business transactions with Mr. McBride? 10  
A. I bought a house of him.  
Q. When did you see Mr. McBride?  
A. 25th day of May, when I had to pay the money.  
Q. Did you see him before the 25th of May?  
A. Yes, sir; I saw him.  
Q. When?  
Q. When he said the 25th day of May, where did he see Mr. McBride?  
A. Schmidt's office. 20  
Q. Did he ever talk to Mr. McBride before that time?  
A. Mr. Reitman told me. Mr. Reitman put everything on a card.  
Q. Was Mr. McBride there?  
A. Yes, sir.  
Q. When was it? Before Schmidt's office or after Schmidt's office?  
A. I can't say the date. 30  
Q. Where was the conversation held?  
A. In my house.  
Q. Was it before you paid the money or after you paid the money?

MR. WOLFSKEIL: If the Court please. Was it before of after the 25th of April.

Q. Was it before or after he paid the \$300?

MR. WOLFSKEIL: You testified yourself that Mr. Reitman paid the \$300 in your office. 40

COURT: When was it that you had the conversation in the office?

MR. STAMLER: It was in the month of April, the 24th or 20th, or something. I can't remember exactly the date.

COURT: Did he sign that contract?

MR. STAMLER: No, his wife signed it.

Q. Who else was there?

10 A. Mr. Reitman, Mr. McBride and myself.

Q. Was anybody else there?

A. Nobody else was there.

Q. What was said at that time about the house and how much it cost?

COURT: That is not the gist of your action.

Q. What did Mr. McBride say about the rent of the saloon over the store on the corner of Pine Street?

20 A. He says \$35 a month for the store.

Q. What else did he say?

A. I asked him if I had to do the repairing in the saloon and he said, No, Mr. Wiedenmayer would do it.

Q. Was there any talking about a lease there?

A. They had a lease for four years to run yet.

Q. Who had the lease?

A. Wiedenmayer had it, and he promised to bring a copy of the lease.

30 Q. About what store were you talking about when you were speaking about a saloon?

A. On the corner of 230 First Street.

Q. What business is in it?

A. Saloon.

Q. Did you speak to him after that and before the contract was signed?

COURT: Do you know when the first contract was signed?

40 A. It was in April done, but I don't remember the date.

- Q. Were you there when your wife signed it?  
A. Yes, sir; I was.  
Q. Did you see Mr. McBride before the contract was signed or after the contract was signed?  
A. I saw him when I paid the money. Schmidt's.  
Q. What was said at that time?

MR. WOLFSKEIL: I object, that was the 25th of May.

MR. STAMLER: Before the delivery of the deed. We are going to show that false representations were made before the signing of the contract, and that again in my office before my partner paid the money for this deed, those misrepresentations were reiterated that this property brought \$35 a month, and that again upon the representations being reiterated, the money was paid and the deed received.

10

20

COURT: I allow the question.

Q. When was the first time that you saw Mr. McBride?

A. When I paid the money.

Q. When did he pay it?

A. 25th day of May.

BY THE COURT:

Q. He says that is the first time he saw Mr. McBride?

A. Yes, sir.

Q. What did Mr. McBride say about the corner store at that time, the corner store and the rent and the lease?

A. He wrote down himself on a piece of paper or card, the property brings \$132, and the store brings \$35 a month.

30

40

BY MR. STAMLER:

Q. Did he say \$132 or \$142?

A. \$142.

Q. How long was the lease to run?

COURT: Didn't say anything about the lease.

A. The lease is to run for four years yet, from the first day of April.

Q. Who collects the rent from the parties?

10 A. I take the rent now.

Q. When did you first collect the rent.

A. It shall be four months paid.

Q. That was after you had the deed and paid the money?

A. Yes, sir; after he bought.

Q. Who came to you with the rent?

A. The collector for the Wiedenmayer Brewery Company.

Q. What was his name?

20 A. Mr. Finner.

Q. How much money was offered to you?

(Objection by defendant and question withdrawn).

*Cross Examination.*

BY MR. WOLFSKEIL:

Q. Mr. Batura, do you speak English?

A. I talk, but very bad.

Q. Ask him if he had a conversation, himself, with Mr. McBride in Mr. Schmidt's office or did somebody  
30 else do the talking for him?

Ask him, Mr. Interpreter, whether or not he had somebody to interpret for him, as you are doing now.

A. No, sir; I spoke myself.

Q. Ask him if he, at that time in Schmidt's office, asked Mr. McBride about the lease on the store?

A. Himself said it.

Q. Did he ask him about it?

A. I asked him for how many, and he said for four  
years.

40 Q. Ask him if Mr. Reitman had not told him a

month before, that there was a lease on, and that four years were on it yet?

A. Yes, sir.

Q. Ask him when he first found out that there was a lease on the property?

COURT: Who is Reitman?

MR. WOLFSKEIL: He is the man who acted for Batura.

10:

A. Mr. Reitman told me, because he is the man that gave \$300 to buy property.

Q. When did Mr. Reitman tell you that there was a lease on the property?

A. When he came back from Mr. Batura's and then he brought a receipt, and then he told me.

Q. On the same day?

A. Yes, sir.

Q. And you saw this paper then on the same day too, didn't you? This is a contract with your wife's signature on it.

A. I don't know anything about it.

Q. Ask him if his wife told him on the same day that she signed the contract?

A. I didn't see her sign it.

Q. I understood him to say on direct examination that he saw her sign it.

MR. STAMLER: It was his answer too. Show it to him.

30

Q. (Paper shown witness). Did you see your wife sign that paper?

A. I can't say.

Q. Ask him if Mr. Reitman told him about any lease on the same day that Reitman paid the \$300.

A. I can't say were the same day or the next day.

40

Q. Did you say that it was there the same day or the next day? Was it one or the other?

A. I can't remember that.

Q. Ask him when Mr. Reitman reported to him that he had paid his \$300.

A. I don't remember the date. I didn't write it down. If I had known it or expected it, I would have written it down.

Q. Ask him how long he has lived in the neighborhood of this property that he bought?

A. About six years.

Q. Who runs the saloon in the store on the corner, in the building that you bought, which is in question here now?

A. Frank O'Neal.

Q. How long have you known Frank O'Neal to have been running that saloon?

A. Maybe eight or nine years, I can't say.

Q. He has known it eight or nine years, do I understand?

A. Yes, sir.

Q. Ask him if he made any inquiries of Frank O'Neal, as to the rent that he paid for that saloon?

MR. STAMLER: I object.

COURT: I overrule the question.

Q. When Mr. Reitman told you about the lease on the property, he showed you a list of the rents on all of the tenants, did he not?

A. Yes, sir.

Q. Did Reitman give you that list, or did he keep it?

A. Mr. Reitman has it marked in a little book and he has the book.

Q. Mr. Reitman has the book, or he has it?

A. Mr. Reitman has the book.

Q. On the 25th day of May, in Mr. Schmidt's office, when you asked Mr. McBride again about the lease, as you have stated before, did you have Mr. Reitman's list with you at the time?

A. Mr. Reitman with him then.

Q. Was it open for inspection at the time? Did they open it?

A. Yes, sir.

Q. Did that list contain a list of all of the tenants and the rents paid by them? 10

A. Yes, sir.

Q. Just pay attention. Why did you say in your direct examination, that Mr. McBride made a list in Mr. Schmidt's office, when you already had a list there?

A. Mr. Reitman had it already in his pocket, and opened it and showed it, for he had it from Mr. McBride.

Q. Then Mr. McBride didn't make a list in Mr. Schmidt's office? 20

A. At the time he had it already written off.

Q. He stated on his direct examination that Mr. McBride made a list of the tenants he has, in Mr. Schmidt's office. Now, ask him if that is true or not.

A. He didn't write it in Mr. Schmidt's office, but after come with me, went to Schmidt's office where went and he wrote everything out.

Q. Again?

A. Everything was written upon before, but when left Schmidt's office he said, I will give you a copy of it, and he made a copy of it. 30

Q. On what?

A. On what he had.

Q. Where?

A. In my house.

Q. Was that after you paid the money and got the deed?

A. He gave me one day before paid the money and another one after we paid the money. 40

Q. Have you got those cards?

A. Yes, sir.

Q. Produce them.

MR. WOLFSKEIL: I ask now for the production of the cards.

A. That is the one, and one in the book. (Produces same).

10 Q. Is this the paper that Mr. McBride gave you?

A. Yes, sir.

MR. WOLFSKEIL: This paper, if the Court pleases, was dated on June 4, 1906.

Q. Was there another paper given to you by Mr. McBride?

A. Mr. Reitman's book.

20 Q. Mr. Batura, you are sure that Mr. McBride gave you that book?

A. Yes, sir.

Q. Look at it—make sure of it?

A. Yes, sir.

Q. Now, I am about to read this paper. (Reading). "This is to certify —"

MR. SCHLEIMER: Not until you offer it in evidence.

30 MR. WOLFSKEIL: The witness testified that this was a list of the rents and tenants. It is manifestly not a list of the tenants.

MR. STAMLER: If Mr. Wolfskiel will offer it, I will consent to its admission.

MR. WOLFSKEIL: I offer it. (Marked Ex. p. 1).

(Same is read to the jury by Mr. Wolfskeil).

40 Q. Is that what Mr. McBride told you about that

store? Will you take that paper and read it to him?

MR. SCHLEIMER: At what time?

MR. WOLFSKEIL: At that time.

MR. STAMLER: If the Court please. If Mr. Wolfskeil will say when Mr. McBride had this conversation, to confine himself to the date, I am perfectly willing for him to show all.

MR. WOLFSKEIL: The Court has permitted him to let in conversation after the signing of the deed. 10

COURT: If I did so, I did it inadvertently.

MR. STAMLER: He says this—He says that he had Mr. Reitman's book with a list which was made before, and which was in Mr. Schmidt's office, and that after the delivering and signing of the deed —

COURT: What was the question? Mr. Ireland, please read the question. 20

(Question is re-read as follows: Will you take that paper and read it to him?)

COURT: The question is, read that to the witness. Read that to the witness.

(Interpreter reads the paper to the witness).

Q. Is that the paper that you referred to when you said that Mr. McBride gave you a list of the tenants? 30

A. This is the paper.

Q. Ask him if that, what is in that paper, is all that Mr. McBride told him about the rent of the saloon?

MR. SCHLEIMER: At the time of this paper on June the fourth?

MR. WOLFSKEIL: At any time.

40

COURT: Well, if you say any time.

Q. When or up to the time of the passing of the deed. The question is, up to the time of the giving of the deed, if the contents of that paper represents exactly what Mr. McBride told him about the saloon and what it brought?

A. He said get \$35 for this month and you supposed to get \$35 for every month.

10 Q. That is not the question. Read the question.  
(The question is re-read).

MR. SCHLEIMER: I think this time ought to be set.

A. For the store.

Adjourned until Monday, Oct. 8, 10 o'clock.

20 Q. After he got the deed to the property, did he go to Mr. O'Neal and ask for the rent?

MR. STAMLER: I object.

MR. WOLFSKEIL: I withdraw the question.

Q. Does he understand English?

A. Not everything, do I understand.

Q. Do you understand what I say to you now?

A. Yes, I understand that you say just now.

30 *Re-Direct Examination by MR. STAMLER:*

Q. On Friday you first testified that you saw Mr. McBride before the contract for the sale of the property was made?

MR. WOLFSKEIL: I object to any statement of counsel as to what the witness testified, as given Friday.

40 COURT: You must not go over any testimony that was given Friday.

Q. When did you first see Mr. McBride in relation to the purchase of this property?

MR. WOLFSKEIL: I object, if the Court please.

MR. STAMLER: If the Court will recall some of the testimony, it was somewhat confused.

COURT: You can only examine him now about what might have been brought out on cross examination. 10

Q. How much rent have you collected for the saloon property since you became the owner of the same.

MR. WOLFSKEIL: I object to what he has collected.

COURT: It doesn't make any difference what he collected. You have got to show the false representation, and then determine 20 the measure of damages.

Q. What rent did you collect from the George Wiedenmayer, Incorporated, since you have become the owner of the property.

COURT: That is not the question now.

MRS. KLEMENTENA BATURA, SWORN. 30

*Direct Examination by MR. STAMLER.*

Q. Mrs. Batura, where do you live?

A. 111 First Street.

Q. How long have you lived in Elizabeth?

A. Nine years ago.

Q. Your husband's name is what? What is your husband's name?

A. Joseph Batura.

Q. Do you know Mr. Thomas McBride? 40

A. Yes, sir; I know him.

Q. From whom did you buy the property known as 226, 228 and 230 First Street?

A. From Mr. McBride.

Q. How did you come to buy that property from Mr. McBride?

A. Maybe six months.

Q. Didn't understand me. How did you come to buy it? How did you buy that property? How did you  
10 come to buy it?

MR. WOLFSKEIL: I object as irrelevant.

COURT: Ask her what conversation she had with him.

Q. Did you have an interview or any talk with Mr. McBride in regard to that property?

A. I don't know. I see Mr. McBride. I didn't have before I saw Mr. McBride. I don't know tell nothing from Mr. McBride—not to this day, but go on to  
20 office of you.

Q. Mr. Schmidt's office?

A. That is first time that I seen.

MR. WOLFSKEIL: I object. That is on the 25th of May, and that is the first time she saw him.

COURT: Yes; only the statements that he made before he gave the deed. Any declarations they made before the contract took place.  
30

MR. WOLFSKEIL: I am ready to admit that without wasting all the time.

Q. What talk did you have with Mr. McBride on the day you paid for your property and got a deed?

COURT: Now, do you understand that question?  
40

A. No, sir not very good. I had nothing to say, nor hear him say until Mr. Schmidt, the lawyer, asked for the lease.

Q. What else?

A. He said, I couldn't get the lease for you, but I tell you that I am getting \$35 a month for the Widenmayer Company for the saloon.

Q. At that time you signed a contract for this property. I will show you this. (Showing witness paper).

10

A. I signed that.

Q. How did you come to buy the property, and through whom did you buy it?

A. Mr. Reitman come to my house and told me that this property is for sale.

MR. STAMLER: I will prove that Mr. Reitman is the agent. I will connect that he was the agent, and had written in a book, the prices that the property brought, the rents that he obtained there, and took out a book and showed her, and that Mrs. Batura gave him the money and told him to go to Mr. Schmidt's office and make this contract.

COURT: They say they were collecting \$35. There is no question about that. The only question is whether they say that they had a contract whereby the tenants were compelled to pay \$35 a month.

MR. STAMLER: The fraud of the agent is the fraud of the principal, if the Court please.

30

COURT: No, you can't say that.

MR. WOLFSKEIL: Especially where I prove that the principal says the same thing.

COURT: They say that they were getting that.

MR. STAMLER: If Mr. Wolfskeil will say now in the record that they collected it under a lease to run four years yet—

40

MR. WOLFSKEIL: I will say exactly what Mr. McBride said.

MR. STAMLER: If the Court please. Our contention is not that the fraud is \$35 a month, but that he had made fraudulent representations that there is a lease that was to run for four years that should be at \$35.

COURT: The question that you asked this witness wouldn't show that.

10 MR. STAMLER: I withdraw the question.

No cross examination.

GEORGE WIEDENMAYER SWORN.

*Direct Examination by MR. STAMLER:*

Q. Mr. Wiedenmayer, what position do you hold in the George Wiedenmayer, Incorporated.

A. President.

20 Q. And have been so for how many years?

A. Ever since been incorporated; for about ten years.

Q. Do you know Mr. Thomas McBride?

A. Yes, sir.

Q. I show you Exhibit 4 on the part of the plaintiff and ask you.

COURT: The lease has been admitted.

30 Q. I show you exhibit 4 upon the part of the plaintiff and do you know what that is?

A. This is a lease upon Thomas McBride and George Wiedenmayer, Incorporated.

Q. Do you know the premises known as 230 First street?

A. I do.

Q. Who is tenant on those premises?

40 MR. WOLFSKEIL: I object, if the Court please, as being a conclusion.

Q. Is this lease still in effect?

MR. WOLFSKEIL: I object, that is a conclusion.

Q. Did you ever give up any rights under this lease?

MR. WOLFSKEIL: I object.

10

Q. Are you still a tenant on the premises?

MR. WOLFSKEIL: I object, as a conclusion.

Q. Did you avail yourself of the privilege to extend under this lease for that additional five years of not?

A. Yes, sir; we did.

Q. Was that in writing? Writen lease?

A. The privilege is extended to us under the lease. 20

BY THE COURT:

Q. Did you have a new lease drawn?

A. No, sir.

BY MR. STAMLER:

Q. Are you still a tenant?

MR. WOLFSKEIL: I object.

COURT: There is a five years lease with privilege of renewal for five years. If it is over three years, it must be in writing. 30

MR. STAMLER: If the Court please, I will press my question on this ground. If there is a written document for a term of years made, for an additional term, it requires no new writing, because the express terms of the agreement state that it is with a privilege of renewal, and it may be a tacit renewal.

COURT: Have you any authority for that?

MR. STAMLER: I think it elementary. 40

COURT: "For the term of five years with the privilege of an additional term of five years at the expiration thereof." To make that good for the next ten years it must be in writing.

Q. How much rent do you pay for the property at the present time?

10 MR. WOLFSKEIL: I object.

MR. STAMLER: It is in evidence now that there is a four year lease for the premises and he says that the tenant is George Wiedenmayer, and says he was paying \$35 a month and we want to show that he didn't pay that \$35.

MR. WOLFSKEIL: I object to the question on the form; I know what the answer may be.

20 MR. STAMLER: You may know what the answer may be.

MR. WOLFSKEIL: Well, he didn't pay a cent.

MR. STAMLER: Then don't you testify, Mr. Wolfskeil.

COURT: If they made an agreement for five years the statute says that if he didn't put it in writing he is a tenant at will.

30 MR. STAMLER: What damages would that be to us? We can show that we lost \$10 a month for that place for the last three months.

COURT: You claim that false representations were made in 1906, that the tenant had a lease for five years and had something over four years to run; now, that is not so, because the law says that it must be in writing. Isn't it?

40 MR. STAMLER: Does your Honor overrule the question as to what amount of rent he pays or what he ever paid?

COURT: No, sir; but the defendant admits that they got \$35 a month.

MR. SCHLEIMER: Not from Mr. Wiedenmayer. He didn't admit that he got it from Mr. Wiedenmayer.

COURT: If the defendant said that he was getting \$35 a month and you relied on that representation, then it couldn't make any difference how much he got a month.

MR. SCHLEIMER: His representation was that he got it from the Wiedenmayer Company under a lease. 10

COURT: Well, if that is your contention now, under that your damages would be six cents.

MR. STAMLER: If the Court please. Assuming that that is a fact; if it takes three months or six months to get him out, aren't we entitled to ten dollars a month damages.

COURT: No, sir; that isn't it. Assuming to establish the false representations, the measure of damages is the difference between the value of the property at the time and the value that it would have had had the representation been true. You had a perfect right at the time you found out about the false representations to say: "Give me my money back and rescind the property"; or, you could have kept the property and sued for damages, which you have done, but the measure of damages is the difference in the value of the property. 20 30

Q. How much rent have you been paying for the property under the lease?

MR. WOLFSKEIL: I object. The lease shows for itself.

Q. Since the expiration thereof and under the renewal?

40

MR. WOLFSKEIL: I object.

COURT: I overrule the question.

(Whereupon the plaintiff, by his counsel, prays a bill of exception, which is hereby allowed and sealed accordingly.)

B. A. VAIL, (L. S.)

Judge.

10

MR. STAMLER: That is not your exhibit.

COURT: It is proven in the case. That proves just what you want this witness to say.

Q. What rent did your company authorize anyone to pay.

MR. WOLFSKEIL: I object.

Q. What did you pay for the rental of the property from the first of April, 1905, until May, 1906?

20 A. \$25.

BY THE COURT:

Q. Just the rent reserved under the old lease?

A. Yes, sir.

BY MR. STAMLER:

Q. How much rent have you paid from May 1, until the present time?

MR. WOLFSKEIL: I object.

30

COURT: You can ask him what he paid up to the date of the giving of the deed.

MR. WOLFSKEIL: I object to this testimony because what he paid and what he might be compelled to pay are two different things.

COURT: Why, of course they are.

MR. STAMLER: I pray an exception.

COURT: Well, ask your question and I will rule on it.

40

Q. How much rent have you paid from May 1 until the present time?

MR. WOLFSKEIL: I object. Irrelevant.

COURT: I overrule the question.

(Whereupon the plaintiff, by his counsel, prays a bill of exception, which is hereby allowed and sealed accordingly.)

10

B. A. VAIL, (L. S.)

*Judge.*

Q. At that time, on April 1, or thereabout, 1905, and about the time for the first five year term of this lease to expire, did you have any additional conversation with Mr. McBride?

MR. WOLFSKEIL: I object as irrelevant.

20

A. I don't understand the question.

Q. In April, 1905, the first five year term of that lease had expired. Did Mr. McBride come to see you or did you go to see Mr. McBride? That is, as to the extension of the time under his lease?

A. I don't think we did. I am not positive. But it is customary in matters of this kind—

COURT: Don't say that.

30

A. I don't know. I was out of the county at that time.

Q. Did you surrender your rights under this lease?

MR. WOLFSKEIL: I object.

COURT: I overrule the question.

(Whereupon the plaintiff, by his counsel, prays a bill

40

of exception, which is hereby allowed and sealed accordingly.)

B. A. VAIL, (L. S.)  
Judge.

Q. How much rent did you pay from the 25th of April until the present time?

MR. WOLFSKEIL: I object.

10 COURT: I overrule any question as to what rent he paid since the deed was given.

(Whereupon the plaintiff, by his counsel, prays a bill of exception, which is hereby allowed and sealed accordingly.)

B. A. VAIL, (L. S.)  
Judge.

*Cross Examination by Mr. WOLFSKEIL:*

20 Q. You say that you paid \$25 a month during the term of the lease. As a matter of fact, did you ever pay anything yourself?

A. Not directly to Mr. McBride.

Q. Who did do the paying. Do you know who did do the paying of the rent?

A. Yes, sir.

Q. Who.

A. Mr. O'Neal.

Q. Who is O'Neal?

30 A. He is our tenant.

Q. And Mr. O'Neal paid the rent to Mr. McBride for what time?

A. From the very first month that he was in there.

Q. That is from the first of April, 1900?

A. Yes, sir.

Q. And during the entire five years, did he not?

A. Yes, sir.

Q. Mr. O'Neal paid the rent to Mr. McBride?

A. Yes, sir.

Q. And during the whole five years the brewery never paid a cent for the brewery.

A. No, sir.

COURT: You sub-let it?

A. Yes, sir.

Q. On the first of April, 1905, while this lease expired, do you know what Mr. O'Neal paid to Mr. McBride for the rent? 10

MR. STAMLER: I object. That is not cross examination.

COURT: I don't see how he could tell that.

Q. To continue my question, I will ask you between the first of April, 1900, and the first of April, 1905, you paid nothing direct? 20

A. Yes, sir.

Q. After the first of April, 1905, and until McBride sold the property, did you pay the rent?

A. No, sir.

Q. Did the same condition of parties continue from the first of April, 1905, until the first of April, 1906, which had existed during the entire period of years.

A. Yes, sir.

Q. As a matter of fact, did you personally see Mr. McBride from the first of April, 1900, until this lease had expired. 30

A. May have seen him but not in connection with this property.

*Re-direct Examination by MR. STAMLER:*

Q. You say O'Neal is your tenant?

A. Yes, sir.

Q. And is still your tenant?

A. Yes, sir.

40

MR. WOLFSKEIL: I object and move that it be stricken out.

MR. SCHLEIMER: Mr. Wolfskeil opened the door, if your Honor please.

Q. O'Neal paid the rent for you during the term of that lease?

MR. WOLFSKEIL: I object.

10 COURT: You can't cross examine your witness. You are asking him leading questions.

Q. By any act of yours or by any act of Mr. McBride's was that lease ever terminated?

MR. WOLFSKEIL: I object. That is a conclusion.

20 MR. STAMLER: If a tenant expresses in a written lease the terms of the renewal and then after expiration of that lease renews it for the additional five years, and does so orally, it is a tacit renewal.

COURT: Can a tacit renewal overrule the statute?

30 MR. SCHLEIMER: If the terms of the written instrument are expressed and the terms of the renewal are expressed and the renewal is entered into, then I submit that that is such a renewal as would be good for at least one year.

COURT: If you have any authorities to support that contention I should be glad to see them.

MR. WOLFSKEIL: Look at the terms of the renewal. They are not expressed.

40 COURT: I know they are not expressed. If you have any authority to support that contention, please produce it.

Q. You did say, however, that O'Neal paid the rent?

MR. WOLFSKEIL: I object.

Q. Did O'Neal not pay that rent with your money?

MR. WOLFSKEIL: I object.

COURT: Question is overruled.

(Whereupon the plaintiff, by his counsel, prays a bill of exception, which is hereby allowed and sealed accordingly.) 10

B. A. VAIL, (L. S.)  
Judge.

MR. ADOLPH REITMAN SWORN.

*Direct Examination by MR. STAMLER:*

Q. What is your business?

A. My business? 20

Q. Yes.

A. Is wholesale in cigars and cigarettes, tobacco business.

Q. Have you any other business besides that?

A. Grocery store too. Then I am in the real estate business too.

Q. How long have you been in real estate business?

A. About two years?

Q. Have you sold a number of properties?

A. I have sold lots of properties. 30

Q. Do you know Mr. McBride?

A. Yes, sir.

Q. Do you know Mr. and Mrs. Batura?

A. Yes, sir.

Q. Did you ever see Mr. McBride in relation to the property on the corner of Pine Street and First Street?

A. Yes, sir.

Q. When was that?

A. That was the 25th of April. 40

Q. That was the first time you called to see him?

A. That was the first time I went to see him about the property.

Q. What did you say to Mr. McBride about the property?

A. I came up and asked Mr. McBride if he go to sale the property. He says, Yes, will sell it. I says how much want? He says, \$16,000. That if the first question—How much will it bring. He told me \$142 a  
10 month. I asked him, Who paid him \$142 a month. He says he got a list. From the Brewery, George Wiedenmayer, has got \$35, and is another man Gilson. I will tell you says because got in a book.

Q. When did you mark in a book?

A. Same day when I went to see Mr. McBride.

Q. Did he see you?

A. He was sitting there by breakfast and I put everything in the book. Wiedenmayer paid \$35.

Q. Read everything what you got on there?

20 A. Yes, sir.

Q. What is on there first?

A. There is 224-230 First Street.

Q. What else is on there?

A. I ask him how much bring rent. He says \$142. I put it up here on the end and I ask him how bring \$142. He told me Wiedenmayer paid \$35. Upstairs on the saloon, \$34 then \$38. There is a Polishman keeps a butcher store and grocery pay \$25, and barber shop pays \$10. I  
count them altogether and saw was \$142.

30 Q. What else did he tell you about a lease.

A. He says Mr. Wiedenmayer has got a lease for four years that same when I bought.

Q. Then did you go and see Mr. and Mrs. Batura?

A. Then went to Mr. and Mrs. Batura and I told them that the property was for sale.

MR. WOLFSKEIL: I object.

40 Q. Did you show them that book?

MR. WOLFSKEIL: I object.

A. I told Mr. Batura and Mrs. Batura I show them that book.

MR. WOLFSKEIL: I object.

COURT: What you—

A. I will swear it—ten times.

COURT: I overrule the question.

10

(Whereupon the plaintiff, by his counsel, prays a bill of exception, which is hereby allowed and sealed accordingly.)

B. A. VAIL, (L. S.)

*Judge.*

Q. Did you tell Mr. McBride who your purchaser was?

A. For who was buying the property?

20

Q. Yes, sir.

A. I tell him.

Q. Who did you tell?

A. For Mrs. and Mr. Batura.

Q. Then did you go to Mr. and Mrs. Batura—

A. And told them how much that bring rent.

Q. Did you inform them what the rental value of the property was as Mr. McBride told you?

MR. WOLFSKEIL: I object to that.

30

Q. What did you tell Mr. and Mrs. Batura when you saw Mr. and Mrs. Batura?

A. I go to them and told them that the property was for sale for \$16,000 and she sent me twice.

Q. What did you say to them about the rents?

COURT: He says he told them what McBride told him.

40

Q. Did you show them this book?

A. I opened that book and show to Mr. and Mrs. Batura how much bring rent a month.

Q. Did you tell them about the rent?

A. I told them about the lease. Mr. Wiedenmayer has got a lease for four years, \$35 a month.

Q. Who paid the deposit for this property?

A. I paid the deposit. I got there the check.

Q. Where did you pay it?

10 A. In Mr. Stamler's office.

Q. To whom?

A. To Mr. McBride.

Q. For whom did you pay that money?

A. For Mr. and Mrs. Batura?

*Cross Examination by MR. WOLFSKEIL:*

Q. Let me look at this book?

A. (Indicating) There it is.

Q. When did you write that?

20 A. The same day what I went out to buy that property I write it. There are some other things there.

Q. All right, I am going to look at some of the other things too. You wrote those off as Mr. McBride told you?

A. Yes, sir.

Q. The rent on the different places?

A. Yes, sir.

Q. You didn't write down the numbers just that moment? See this is 230?

30 A. That is 224-230 First Street, and I asked him how much rent that brings a month and he told me \$142.

Q. Did you write all of this first, 224-230 First Street, all the way through at the same time?

A. Yes, sir.

Q. And with the same pencil?

A. Yes, sir; at Mr. McBride's.

Q. And wrote this 224 First Street all with the same pencil?

40 A. Yes, sir.

Q. And at the same time?

A. Yes, sir. About ten o'clock in the morning.

Q. And from here to here—that whole page you wrote right there at ten o'clock in the morning in Mr. McBride's presence, didn't you?

A. Yes, sir.

Q. What did you do with this book after you wrote this?

A. I went over to Mr. and Mrs. Batura's and I told them how much price is for the property and how much bring rent. 10

Q. After they had done that, didn't you go and see the tenants and ask them if that was right?

A. What I got to do with the tenants —

Q. Answer my question.

A. I didn't go to see the tenants—took Mr. McBride's word.

Q. Did you go to Mr. O'Neal and show him this book and ask him if this was right and if he was paying \$35 a month? 20

MR. STAMLER: I object to that question.

COURT: I allow the question.

Q. What is your answer? Did you go to Mr. O'Neal and ask him if that is right?

A. No, sir; I didn't go to Mr. O'Neal.

MR. WOLFSKEIL: Can the book be shown to the jury? 30

MR. STAMLER: I am satisfied.

(Same is marked Exhibit p. 6.)

MR. CHARLES L. MORGAN SWORN.

*Direct Examination by MR. STAMLER:*

Q. Mr. Morgan, you are a member of the bar?

A. Yes, sir.

Q. And practicing attorney in this case?

A. Yes, sir. 40

Q. Did you make a search on property known as 224, 226, 228 and 230 First Street, belonging to Mr. McBride, for Mrs. Batura?

A. Yes, sir.

Q. When?

A. On May 22, 1906.

10 COURT: What is the object of this testimony?

MR. STAMLER: I want to show that there was no lease on record.

COURT: You have got to recover this case on a false representation. I overrule that question.

(Whereupon the plaintiff, by his counsel, prays a bill of exception, which is hereby allowed and sealed accordingly.)  
20

B. A. VAIL, (L. S.)  
*Judge.*

Q. Did you or did you not find a lease on record from Thomas McBride to George Wiedenmayer, Incorporated, dated April 1, 1900, or dated April 1, 1905, or any other lease?

30 MR. WOLFSKEIL: Objected to.

COURT: I overrule the question.

Q. Was or was not your search made for a lease for the premises—

MR. WOLFSKEIL: I object.

COURT: I overrule the question.

40 (Whereupon the plaintiff, by his counsel, prays a bill

of exception, which is hereby allowed and sealed accordingly.)

B. A. VAIL, (L. S.)  
*Judge.*

PLAINTIFF RESTS.

(Defendant here moves for a non-suit on the ground that in an action to show fraud and deceit it is so nearly akin to a criminal action that it requires just as strong proof of the plaintiff as though he was attempting to send a man to prison for a crime, and presents his argument to the Court.) 10

DEFENSE OFFERS NO TESTIMONY.

COURT: As the case now stands, I shall instruct a verdict for six cents. There is evidence in this case to show that he said to these purchasers that he had a four years lease for \$35 a month. 20

MR. STAMLER: I object to your Honor's instructing a verdict for six cents.

MR. WOLFSKEIL: I shall accept your Honor's instructing a verdict for six cents.

The Court here instructs the jury to return a verdict of six cents in favor of the plaintiff.

(Whereupon the plaintiff, by his counsel, prays a bill of exception, which is hereby allowed and sealed accordingly.)

B. A. VAIL, (L. S.) 30  
*Judge.*

## New Jersey Court of Errors and Appeals.

10	KLEMENTENA BATURA AND JOSEPH BATURA, <i>Plaintiffs in Error,</i>	}	<i>In Error.</i>
	<i>vs.</i>		<i>Assignment of</i>
	THOMAS MCBRIDE, <i>Defendant in Error.</i>		<i>Errors.</i>

20 Afterwards, that is to say, on the thirty-first day of October, in the same term, before the Judges of said Court of Errors and Appeals, the last resort in all cases, at Trenton, come the said Plaintiffs in Error, Klementena Batura and Joseph Batura, by John J. Stamler, their attorney, and say, that in the record and proceedings aforesaid, and also in the matters recited and contained in said bill of exceptions, and also in the giving of the verdict and judgment aforesaid, there is manifest error in this, to wit:

30 *First:* That the said Judge, before whom, &c., at and upon the aforesaid trial of the said issue so joined between the parties aforesaid, and against the objection of the said plaintiffs in error, excluded legal evidence on the direct examination of George W. Wiedenmayer, a witness, produced on behalf of the plaintiffs, as follows:

Q. How much rent have you been paying for the property under the lease?

40 MR. WOLFSKEIL: I object. The lease shows for itself

Q. Since the expiration thereof and under the renewal?

MR. WOLFSKEIL: I object.

COURT: I overrule the question.

(Whereupon the plaintiff, by his counsel, prays a bill of exception, which is hereby allowed and sealed accordingly.)

B. A. VAIL, (L. S.) 10  
*Judge.*

Q. How much rent have you paid from May 1, until the present time?

MR. WOLFSKEIL: I object.

COURT: You can ask him what he paid up to the date of the giving of the deed.

MR. WOLFSKEIL: I object to this testimony because what he paid and what he might be 20 compelled to pay are two different things .

COURT: Why, of course they are.

MR. STAMLER: I pray an exception.

COURT: Well, ask your question and I will rule on it.

Q. How much rent have you paid from May 1, until the present time?

MR. WOLFSKEIL: I object. Irrelevant. 30

COURT: I overrule the question.

(Whereupon the plaintiff, by his counsel, prays a bill of exception, which is hereby allowed and sealed accordingly.)

B. A. VAIL, (L. S.)  
*Judge.*

40

Q. In April, 1905, the first five year term of that lease had expired. Did Mr. McBride come to see you or did you go to see Mr. McBride? That is, as to the extension of the time under his lease?

A. I don't think we did. I am not positive. But it is customary in matters of this kind—

COURT: Don't say that.

10 A. I don't know. I was out of the county at that time.

Q. Did you surrender your rights under this lease?

MR. WOLFSKEIL: I object.

COURT: I overrule the question.

(Whereupon the plaintiff, by his counsel, prays a bill of exception, which is hereby allowed and sealed accordingly.)

20 B. A. VAIL, (L. S.)  
Judge.

*Second*: That the said Judge before whom, &c. at and upon the aforesaid trial of the said issue so joined between the parties, aforesaid, and against the objection of the said plaintiffs in error, excluded legal evidence on the re-direct examination of George W. Wiedenmayer, a witness produced on behalf of the plaintiffs, as follows:

30 Q. Did O'Neal not pay that rent with your money?

MR. WOLFSKEIL: I object.

COURT: Question is overruled.

(Whereupon the plaintiff, by his counsel, prays a bill of exception, which is hereby allowed and sealed accordingly.)

40 B. A. VAIL, (L. S.)  
Judge.

*Third:* That the said Judge, before whom, &c., at and upon the aforesaid trial of the said issue so joined between the parties aforesaid, and against the objection of the said plaintiffs in error, excluded legal evidence on the direct examination of John J. Stamler, a witness produced on behalf of the plaintiffs, as follows:

Q. Was there anything said in your office regarding a limited time in which \$35 was being paid for that saloon?

A. Mr. McBride said that for a year or more—I don't remember the months—that he has received from the Wiedenmayer Brewery \$35 a month for the rent of the store and that the lease was made to expire about four or four and a half years. That is my recollection. 10

Q. Did he or not say what the rent of that saloon would be for the following four and a half years?

A. He said that the new rent had commenced at \$35 a month and that it is to continue until the expiration of the term. I asked him absolutely as to that and he said there that a new agreement had been made and Mr. McBride subsequently said— 20

Q. Same day?

A. After the deed had passed.

MR. WOLFSKEIL: I object.

COURT: I overrule the question.

MR. SCHLEIMER: An admission that he only received \$25 a month. We offer to prove the conversation of the defendant after the passing of the deed to the same effect. 30

COURT: Don't make any difference what he said afterwards.

MR. STAMLER: Your Honor will please allow us an exception.

(Whereupon the plaintiff, by his counsel, prays a bill 40

of exception, which is hereby allowed and sealed accordingly.)

B. A. VAIL, (L. S.)  
*Judge.*

*Fourth:* That the said Judge, before whom, &c., at and upon the aforesaid trial of the said issue so joined between the parties aforesaid, and against the objection of the said plaintiffs in error, excluded legal evidence  
10 on the direct examination of Charles L. Morgan, a witness produced on behalf of the plaintiffs, as follows:

Q. Did you make a search on property known as 224, 226, 228 and 230 First Street, belonging to Mr. McBride, for Mrs. Batura?

A. Yes, sir.

Q. When?

A. On May 22, 1906.

20 COURT: What is the object of this testimony?

MR. STAMLER: I want to show that there was no lease on record.

COURT: You have got to recover this case on a false representation. I overrule that question.

(Whereupon the plaintiff, by his counsel, prays a bill of exception, which is hereby allowed and sealed accordingly.)

30 B. A. VAIL, (L. S.)  
*Judge.*

Q. Did you or did you not find a lease on record from Thomas McBride to George Wiedenmayer, Incorporated, dated April 1, 1900, or dated April 1, 1905, or any other lease?

MR. WOLFSKEIL: Objected to.

40 COURT: I overrule the question.

Q. Was or was not your search for a lease for the premises—

MR. WOLFSKEIL: I object.

COURT: I overrule the question.

(Whereupon the plaintiff, by his counsel, prays a bill of exception, which is hereby allowed and sealed accordingly.)

B. A. VAIL, (L. S.)  
*Judge.*

10

*Fifth:* That the said Judge, before whom, &c., at and upon the aforesaid trial of the said issue so joined between the parties aforesaid, and against the objection of the said plaintiffs in error, did direct and instruct the Jury to return a verdict of Six cents in favor of the plaintiffs, as follows, to wit:

COURT: As the case now stands, I shall instruct a verdict for six cents. There is evidence in this case to show that he said to these purchasers that he had a four years lease for \$35 a month.

MR. STAMLER: I object to your Honor's instructing a verdict for six cents.

MR. WOLFSKEIL: I shall accept your Honor's instructing a verdict for six cents.

The Court here instructs the jury to return a verdict for six cents in favor of the Plaintiffs.

30

(Whereupon the plaintiff, by his counsel, prays a bill of exception, which is hereby allowed and sealed accordingly.)

B. A. VAIL, (L. S.)  
*Judge.*

*Sixth:* There is also error in this, to wit, that by the record, aforesaid, it appears that the judgment in

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form aforesaid was given for the plaintiffs against the defendant for nominal damages of six cents, whereas by the law of the land, judgment ought to have been given for the said plaintiffs and against the said defendant, for a large sum of money, to wit, the damages suffered by said plaintiffs by reason of the fraudulent representations made by said defendant.

Therefore, the said plaintiffs pray that the judgment aforesaid, by reason of the aforesaid errors, and all other  
10 errors appearing in the record and proceedings aforesaid, be reversed, annulled and held for nothing; and that the said plaintiffs be restored in all things that they have lost by reason of said judgment, and that the said defendant may rejoin to the said errors, &c.

JOHN J. STAMLER,  
*Attorney for and of Counsel with the  
Plaintiffs in Error.*

20 And, hereupon, afterwards, the said Thomas McBride, by W. D. Wolfskeil, his attorney, comes into court and says that there is no error either in the record and proceeding aforesaid, or in giving the judgment aforesaid, and he prays here that the court here may proceed to examine as well the record and proceedings aforesaid, as the matters aforesaid assigned for error, and that the judgment aforesaid, in manner aforesaid given, may in  
30 all things be affirmed, etc.

W. D. WOLFSKEIL,  
*Attorney for and of Counsel with Defendant.*

40

## Exhibit P 1.

### Agreement for Sale of Property.

10

ARTICLES OF AGREEMENT, made the Twenty-fifth day of April, in the year of Our Lord One thousand nine hundred and six, BETWEEN Thomas McBride, of the City of Elizabeth, in the County of Union, and State of New Jersey, of the First Part; AND Klenemtina Batura, wife of Joseph Batura, of the City of Elizabeth, in the County of Union, and State of New Jersey, of the Second Part.

WITNESSETH, That the said party of the first part, for and in consideration of the sum of sixteen thousand dollars, to be paid and satisfied as hereinafter mentioned, and also in consideration of the covenants 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 he, the said party of the first part, will well and sufficiently convey to the said party of the second part, their heirs and assigns, by Deed of Warranty, free from all encumbrance, including taxes and assessments for the year Nineteen hundred and six, on or before the first day of November next ensuing the date hereof, all those lots, tracts, or parcels, of land and premises, hereinafter particularly described, situate, lying and being in the City of Elizabeth, in the County of Union, and State of New Jersey, known as houses and lots numbered 224, 226, 228 and 230 First Street, Elizabeth, New Jersey.

20

30

The premises are conveyed subject to a lease on the corner store, held by Geo. Whittemeyer, of the City of Newark.

40

AND the said Klementina Batura, wife of Joseph Batura, for herself, 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 she, 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 Sixteen thousand dollars, as and for the purchase money of the foregoing described land and premises, in the following manner, that is to say:

10

Three hundred dollars at the signing of this agreement, receipt thereof is hereby acknowledged.

The balance, the sum of Fifteen thousand and seven hundred dollars, to be paid when deed is to be delivered.

AND IT IS FURTHER AGREED, by the parties to these presents, that the said party of the second part, her heirs and assigns, may enter into and upon the said land and premises on the first day of \_\_\_\_\_, when deed will

20

be delivered next ensuing the date hereof, and from thence take the rents, issues and profits to her and their use.

AND IT IS FURTHER AGREED, by the parties hereto, that the said Deed of Warranty shall be delivered and received at the office of John J. Stamler, 207 Broad Street, Elizabeth, N. J., between the hours of Ten in the forenoon and Four o'clock in the afternoon on the said First day of November next ensuing the date hereof.

IN WITNESS WHEREOF, the said parties have hereunto interchangeably set their hands and seals the day and year first above mentioned.

30

THOMAS MCBRIDE, [L. S.]

KLEMENTYNA BATURA, [L. S.]

Signed, Sealed and Delivered in the presence of

JOHN J. STAMLER.

40

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

BE IT REMEMBERED, That on this 25th day of April, in the year of Our Lord One thousand nine hundred and six, before me, a Commissioner of Deeds of New Jersey, personally appeared Thomas McBride, who, I am satisfied, is the grantor in the within agreement named; and I having first made known to him the contents thereof, he did acknowledged that he signed, sealed and delivered 10  
the same as his voluntary act and deed, for the uses and purposes therein expressed.

JOHN J. STAMLER,  
*Com. of Deeds of N. J.*

THOMAS McBRIDE,  
AND  
KLEMENTINA BATURA AND JOSEPH  
BATURA.

Dated, April 25, 1906.

Received in the Register's Office of the County of 20  
Union, N. J., on the 28th day of April, A. D., 1906, at  
of Deeds for said County ,on pages 142, etc.

FRANK H. SMITH,  
*Register.*

JOHN J. STAMLER, Counselor at Law, 207 Broad Street,  
Elizabeth, New Jersey.

### Exhibit P 2.—Deed.

30

THIS INDENTURE, made the First day of May, in the year of Our Lord One thousand nine hundred and six, BETWEEN Thomas McBride and Bridget McBride, his wife, of the City of Elizabeth, in the County of Union, and State of New Jersey, of the First Part; AND Klementina Batura and Joseph Batura, her husband, of the City of Elizabeth, in the County of Union, and State of New Jersey, of the Second Part. 40

WITNESSETH, That the said party of the first part, for and in consideration of One dollar and other good and valuable consideration, money of the United States of America, to them in hand well and truly paid by the said party of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the first part, there-  
with fully satisfied, contented and paid, have given,  
granted, bargained, sold, aliened, released, enfeoffed, con-  
veyed and confirmed, and by these presents do give,  
grant bargain, sell, alien, release, enfeoff, convey and  
confirm to the said party of the second part, and to  
their heirs and assigns forever, all those lots, tracts or  
parcels of land and premises, hereinafter particularly de-  
scribed, situate, lying and being in the City of Elizabeth,  
in the County of Union, and State of New Jersey, more  
particularly laid down, designated and distinguished on  
a certain map entitled "MAP OF THE NEW MANU-  
FACTURING TOWN OF ELIZABETHPORT, NEW  
JERSEY," (now on file in the office of the Register of  
the County of Essex), as lots numbered Sixty (60),  
(Sixty-two (62) and Sixty-four (64) on block numbered  
Sixty-eight (68), as laid down on said Map.

A portion of the lands and premises in question are conveyed subject to a lease on the premises No. 230 First Street, held by George Wiedermayer, of the City of Newark, which lease has four years to run from the First day of April, Nineteen hundred and six.

TOGETHER with all and singular the houses, build-  
ings, trees, ways, waters, profits, privileges, and advan-  
tages, with the appurtenances to the same belonging or  
in anywise appertaining :

ALSO, all the estate, right, title, interest, property,  
claim and demand whatsoever, of the said party of the  
first part, of, in and to the same, and of, in and to every  
part and parcel thereof,

TO HAVE AND TO HOLD, all and singular the above  
described land and premises, with the appurtenances, unto

the said party of the second part, their heirs and assigns, to the only proper use, benefit and behoof of the said party of the second part, their heirs and assigns forever:

AND the said parties of the first part do for themselves, their heirs, executors and administrators covenant and grant to and with the said party of the second part, their heirs and assigns, that they, the said parties of the first part, are the true, lawful and right owners of all and singular the above described land and premises, and of every part and parcel thereof, with the appurtenances thereunto belonging; and that the said land and premises, or any part thereof, at the time of the sealing and delivery of these presents, are not encumbered by any mortgage, judgment, or limitation, or by any encumbrance whatsoever, by which the title of the said party of the second part, hereby made or intended to be made, for the above described land and premises, can or may be changed, altered, or defeated in any way whatsoever.

AND ALSO, that the said party of the first part now have good right, full power and lawful authority, to grant, bargain, sell and convey the said land and premises in manner aforesaid:

AND ALSO, that the said parties of the first part will WARRANT, secure, and forever defend the said land and premises unto the said parties of the second part, their heirs and assigns, forever, against the lawful claims and demands of all and every person or persons, freely and clearly freed and discharged of and from all manner of encumbrance whatsoever.

IN WITNESS WHEREOF, the said party of the first part have hereunto set their hands and seals the day and year first above written.

THOMAS McBRIDE, [L. S.]

her

BRIDGET X McBBIDE, [L. S.]

mark

Signed, Sealed and Delivered in the presence of

GEO. SCHMIDT.

40

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

BE IT REMEMBERED, That on this Twenty-fourth day of May, in the year of Our Lord One thousand nine hundred and six, before me, a Master in Chancery of New Jersey, personally appeared Thomas McBride and Bridget McBride, his wife, who, I am satisfied, are the grantors mentioned in the within Indenture, and to whom  
10 I first made known the contents thereof, and thereupon they acknowledged that they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed: And the said Bridget McBride being by me privately examined, separate and apart from her husband, acknowledged that she signed, sealed and delivered the same as her voluntary act and deed, freely without any fear, threats or compulsion of her said husband.

20 GEO. SCHMIDT, JR.,  
M. C. C. of N. J.

THOMAS MCBRIDE AND BRIDGET  
MCBRIDE, HIS WIFE,  
TO  
KLEMENTINA BATURA AND JOSEPH  
BATURA, HER HUSBAND.

30 Dated, May 1st, 1906.

Received in the Register's Office of the County of Union on the 25th day of May, A. D., 1906, at 2.06 o'clock, in the afternoon and recorded in Book 467 of Deeds for said County, on pages 30, etc.

FRANK H. SMITH,  
Register.

40

### Exhibit P 3

THIS INDENTURE, made this Fourteenth day of April, in the year One thousand nine hundred and , BETWEEN Thomas McBride, of the City of Elizabeth, in the County of Union, and State of New Jersey, of the First Part; AND George W. Wiedenmayer, Incorporated, of the City of Newark, in the County of Essex, and State of New Jersey, of the Second Part. 10

WITNESSETH, That the said party of the first part, does hereby demise and lease unto the said party of the second part, its successors and assigns, the entire first floor of the premises known and designated as No. 230 First Street, in the City of Elizabeth, Union County, and State of New Jersey, together with part of the cellar room belonging to said premises with the appurtenances, and the sole and uninterrupted use and occupation thereof (except as hereinafter mentioned) for the term of Five years, with the privilege of an additional term of Five years at the expiration thereof, from the First day of April, A. D., 1900, for the yearly rent of Three hundred dollars payable monthly. 20

And the said party of the second part does hereby agree to pay the said party of the first part, his heirs, assigns, agents or attorneys, the said yearly rent of Three hundred dollars at the time and in the manner aforesaid. 30

And the said party of the second part does further promise and agree that, that the said party of the first part, his heirs, assigns, agents, or attorney, may enter into and upon said premises at reasonable hours in the day time, to examine the same, or to make such repairs or alterations therein as shall be necessary for the preservation thereof; and to exhibit them at any time during the last three months of the said term, from Ten o'clock in the morning to Five o'clock in the afternoon (Sundays 40

excepted), to any person or persons; and put up notices "To Let" or "For Sale" on the outside wall thereof.

If the said premises shall become vacant, or deserted, during said term, the said party of the second part does hereby authorize the said party of the first part, his heirs, assigns, agents, or attorney, to re-enter the same, at his or their option, and re-let them and receive and apply the rent so received to the payment of the rent due by these presents.

10 And the said party of the second part do further agree to keep the premises in as good repair as the same shall be at the commencement of said term (wear and tear arising from a reasonable use of the same and damage by the elements excepted); and at the expiration of said term to yield up the peaceable possession thereof to the said party of the first part, his heirs, assigns, agents or attorney.

20 IN WITNESS WHEREOF, the said parties have hereunto, in duplicate, set their hands and seals the day and year first above mentioned.

THOMAS MCBRIDE, [L. S.]

Sealed and Delivered  
in the presence of

GEORGE W. WIEDENMAYER, *Prest.*

30 Fifty-six words erased before execution.

Geo. J. Weidenmayer to Thos. McBride.

(Wiedenmayer Seal).

Attest: GUST. A. WIEDENMAYER, *Secy.*

40 PAYMENT OF the rent mentioned in the annexed lease is acknowledged to have been received as follows:

Date of Receipt	Amount Received	Dol- lars	Cts.	For What Time	Owner's Agents or Attorney's Signature	
1900 October 13	One Hundred and Fifty	150	.....	April 1 to Oct. 1	Thos. McBride	
1901 August 9	Two Hundred and Fifty	250	.....	Oct. 1, 1900 to Aug. 1, 1901	Thos. McBride	
1902 February 1	One Hundred and Fifty	150	.....	Aug 1, 1901 to Feb. 1, 1902	Thos. McBride	
August 1	One Hundred and Fifty	150	.....	Feb. 1 to Aug. 1	Thos. McBride	10
1903 February 1	One Hundred and Fifty	150	.....	Aug. 1 to Feb. 1, 1903	Thos. McBride	
1904 January 2	Two Hundred Seventy-five	275	.....	Feb. 1, 1903 to Jan. 1, 1904	Thos. McBride	
December	Three Hundred	300	.....	Jan. 1, 1904 to Jan. 1, 1905	Thos. McBride	
1906 May 22	Three Hundred	300	.....	Jan. 1, 1905 to Jan. 1, 1906	Thos. McBride	
May 22	One Hundred	100	.....	Jan. 1, 1906 to May 1, 1906	Thos. McBride	
May 21	Twenty-five	25	.....	May	Jos. Baturó	20
July 6	Twenty-five	25	.....	July and full to date	Jos. Baturó	

### Exhibit P 5.

This is to certify that I, Thomas McBride, have received Thirty-five, \$35.00, per month for store 230 First Street, from April 1st, 1905, to June 1st, 1906.

THOS. McBRIDE,  
Elizabeth, N. J.

June 4, 1906.

**Exhibit P 6.**

224-230 First.

\$142 Rent.

10	Wedenmyr Liss	\$35
	Apstes	34
	Gersan	38
	Polak	25
	Barber	10
		—
		\$142

20

30

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